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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1941

No. 711

H. J. GORMAN, CITY TREASURER OF KANSAS CITY, MISSOURI, AND FRANK McCABE, CITY ASSESSOR OF KANSAS CITY, MISSOURI, PETITIONERS,

vs.

THE WASHINGTON UNIVERSITY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

PETITION FOR CERTIORARI FILED OCTOBER 22, 1941.

CERTIORARI GRANTED NOVEMBER 24, 1941.

SUPREME COURT OF THE UNITED STATES

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[fol. a] [Caption omitted]

IN CIRCUIT COURT OF JACKSON COUNTY, MISSOURI

No. 436537

THE WASHINGTON UNIVERSITY, a Corporation, Plaintiff,

vs.

H. F. GORMAN, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Defendants

JUDGMENT—February 24, 1940

On the 26th day of January, 1940, this cause came on regularly for hearing and the parties appearing by proper representatives and by their respective attorneys, and the [fol. b] cause was submitted to the Court upon the pleadings and evidence adduced and by the Court taken under advisement. Now on this 24th day of February, 1940, the Court being fully advised in the premises, doth find all the issues herein in favor of plaintiff and against defendants.

It Is, Therefore, Ordered, Adjudged and Decreed as follows:

That the parcels of property, and each of them, described in plaintiff's petition as owned by plaintiff, viz:

All of Lots six (6) and seven (7), Block two (2), Ashburn's Addition to the City of Kansas, now Kansas City, Missouri, according to the recorded plat thereof.

All of Lot three hundred thirteen (313) (except part thereof in Main Street) in Block twenty-four (24), McGee's Addition to the City of Kansas, now Kansas City, Missouri, according to the recorded plat thereof, being a tract or parcel of land fronting 49 feet 6 inches on the east line of Main Street by a depth eastwardly between parallel lines and along the north line of East Seventeenth Street, 113 feet 6 inches to an alley.

All of Lot ten (10) in Block six (6), McDaniel's Addition an addition in Kansas City, Jackson County, Missouri; were and are under the Acts of the General Assembly of the State

of Missouri incorporating plaintiff and constituting its charter, exempt from taxation.

That by reason of said charter exemption the assessment and levy taxes upon the said property and the issuance of tax bills against the same were and are contrary to law and void.

That tax bills made out and issued for taxes against said property and any parcels thereof for 1933 and subsequent years were and are unauthorized by law and void, and that the said tax bills, and each of them, and any reissues or renewals thereof ought to be and are hereby ordered cancelled.

That the temporary injunction heretofore issued by this Court on November 20, 1934 be made permanent, and that defendant Frank McCabe as Assessor of Kansas City, Missouri, his deputies, agents and servants be forever enjoined and restrained from assessing any general city taxes against any of plaintiffs' said property, and that the defendant [fol. c] H. E. Gorman, as City Treasurer of Kansas City, Missouri, his deputies, agents and servants be and they are hereby forever enjoined and restrained from in any manner collecting or enforcing or attempting to collect or enforce the payment of any of said tax bills, or any renewals or reissues thereof, and from seizing, offering for sale or selling plaintiff's said property, or any part thereof, for the enforcement or collection of any of said tax bills or any renewals or reissues thereof.

And that plaintiff have and recover of the defendants its costs herein.

IN CIRCUIT COURT OF JACKSON COUNTY

[Title omitted]

ORDER ALLOWING APPEAL—May 4, 1940

Now on this day defendant files and presents affidavit for appeal, and appeal is allowed to the Supreme Court. Defendant is given the time allowed by law for filing bill of exceptions.

Clerk's Certificate to foregoing papers omitted in printing.

[fol. 1] IN SUPREME COURT OF MISSOURI, SEPTEMBER TERM, 1940

No. 37435

THE WASHINGTON UNIVERSITY, Respondent,

vs.

H. J. GORMAN, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Appellants

Appeal From the Circuit Court of Jackson County

Honorable Paul A. Buzard, Judge

Appellants' Abstract of the Record—Filed February 24, 1940

RECORD PROPER

This suit was commenced in the Circuit Court of Jackson County on the 19th day of November, 1934 by filing a petition in the office of the Clerk of said Court. A summons was duly issued and due service upon Maurice Carey, the then City Treasurer, was had (said petition) omitted here [fol. 2] because ease was thereafter tried on amended petition wherein H. J. Gorman was substituted for Maurice Carey, deceased, as City Treasurer and Frank McCabe, City Assessor, was made a new and additional party to this suit.

Thereafter and on the 20th day of November, 1934, a temporary injunction issued against Maurice Carey, the then City Treasurer, restraining him from selling the real estate in question at tax sale until the further order of Court. The said Maurice Carey, City Treasurer, being the only party defendant at that date.

Thereafter and on the 26th day of January, 1935, defendant Maurice Carey, City Treasurer, filed his demurrer to plaintiff's petition.

Whereupon, thereafter and on the 26th day of January, 1938, by leave of Court, plaintiff filed amended petition making Frank McCabe, City Assessor of Kansas City, a new and additional party and alias summons was issued thereon

and duly served upon said Frank McCabe, City Assessor, on the 27th day of January, 1938.

Thereafter and on the 2nd day of June, 1938 defendants filed answer to amended petition.

Thereafter and on the 26th day of January, 1940, by agreement of parties and by leave of Court, plaintiff amended its petition by making H. J. Gorman, City Treas- [fol. 3] urer of Kansas City, Missouri, a party defendant instead of and for Maurice Carey, deceased. This cause was heard upon said petition as amended, which is as follows:

AMENDED PETITION

Count I

1. Plaintiff for its amended petition filed by leave of Court states that it is a corporation duly organized and existing under the Acts of the General Assembly of the State of Missouri, viz:

That the said General Assembly of the State of Missouri, incorporated the "Eliot Seminary", by an Act entitled "An Act to Incorporate the Eliot Seminary", approved February 22, 1853, which said Act was and is in the words and figures following:

"Be it enacted by the General Assembly of the State of Missouri as follows:

"Section 1. Christopher Rhodes, Samuel Treat, John M. Krum, John Cavender, George Partridge, Phocion R. McCreery, George Pegram, N. J. Eaton, James Smith, Seth A. Roulett, Mann Butler, William C. Elliott, Jr., John How, Hudson E. Bridge, William Glasgow, Jr., Samuel Russell and Wayman Crow and their associates and successors are hereby constituted a body corporate and politic by the name of 'The Eliot Seminary' and by that name shall have perpetual succession and be capable of taking and holding by gift, grant, devise or otherwise, and conveying, leasing or other- [fol. 4] wise disposing of any estate, real, personal or mixed, annuities, endowments, franchises, and other hereditaments which may conduce to the support of said Seminary, or to the promotion of its objects; all property of said corporation shall be exempt from taxation and the sixth, seventh and eighth sections of the first Articles of the Act concerning corporations, approved March 19th, 1845, shall not apply to this corporation.

"Section 2. The management of the affairs of this corporation shall be vested in a board of seventeen directors; the persons herein named shall constitute the first board of directors. Vacancies occurring in the Board by resignation, death or otherwise, shall be filled by the Board.

"Section 3. The board of directors shall prescribe the course of instruction in said Seminary and organize the institution under such regulations and provide in such way as they may deem proper for the appointment of its professors, teachers and other officers, and may make such by-laws and rules as they may deem necessary for the management of the institution.

"Section 4. This act shall take effect upon its passage.

"Approved February 22, 1853."

That under the said Act, the parties named therein, without delay, proceeded to organize the said "Eliot Seminary", as a seminary and institution of learning, as by said Act provided; that the said "Eliot Seminary" immediately [fol. 6] was organized, and immediately became and was an existing corporation, under its said corporate name, and by its said name acquired and held property as such, and in all respects undertook to carry out, and did carry out, the purposes, and exercised and enjoyed the rights and franchises, by said Act provided and intended.

2. That afterwards the said Act of the said General Assembly of Missouri (by and under which the said corporation was organized) was amended, by an amendatory act entitled "an Act to Amend an Act entitled 'an Act to Incorporate the Eliot Seminary', approved February 12, 1857", which said amendatory act was and is in words and figures as follows, to-wit:

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. The name of the corporation known as 'The Eliot Seminary' shall henceforth be 'The Washington University', by which name the said corporation shall have, hold and enjoy all the property, rights, franchises, endowments, immunities and privileges conferred upon and belonging to The Eliot Seminary.

"Section 2. No instruction either sectarian in religion or party in politics shall be allowed in any department of said University, and no sectarian or party test shall be allowed in the election of professors, teachers, or other officers of said University, or in the admission of scholars thereto or for any purpose whatsoever.

[fol. 6] "Section 3. It shall be the duty of the Board of Directors of said University upon being informed to any violation of the second section of this act forthwith to institute an enquiry into the charge or charges that may be preferred in respect thereof by any credible person in writing against any officer of said University; and if it shall appear that any officer of said University has violated the said second section of this act, the Board of Directors shall forthwith remove such person so offending from any office which he may then fill in any department of said University, and such person so removed shall be forever thereafter ineligible to any office in said University.

"Section 4. In case the Board of Directors upon being notified in writing by any credible person of a violation of the second section of this Act, shall refuse or neglect to investigate the charge thereupon preferred against any officer of said University, it shall be competent for the St. Louis Circuit Court, or the St. Louis Court of Common Pleas, to compel the Board of Directors by mandamus, to perform their duty in investigating such charge, and to show their performance of such duty to the satisfaction of the Court having cognizance of the matter, and all proceedings under this section shall be summary, and conducted to a conclusion with as little delay as possible; and the power hereby given to the said courts may be exercised by the judge of either of said tribunals in vacation.

"Section 5. Whereas the said Eliot Seminary has purchased for the purpose of erecting thereon university build-
[fol. 7] ings, a tract of land within the present corporate limits of the City of St. Louis, containing about three 40/1000 acres of land, bounded on the East by an alley, on the West by Beaumont Street, on the South by Locust Street, and on the North by Washington Avenue. And Whereas said tract of land, before being conveyed to the said corporation was described and designated in a plat filed in the Office of the Recorder of Deeds of St. Louis County.

as a part of an addition to the City of St. Louis, and certain streets and alleys were marked and shown on said plat as traversing said tract, but were never actually opened and laid out on the ground through said tract; and whereas, it is desirable that the buildings proposed, the said University, should cover a larger portion of said tract, and that the whole thereof should be within one enclosure and secure from interruption or disturbance; therefore, it is enacted, that all streets and alleys existing in contemplation of law, through, over or upon the said tract of land so acquired by said corporation as aforesaid, shall be and the same are hereby vacated and abolished; and it shall not be lawful for the City of St. Louis or the County of St. Louis to open any road, street, alley or avenue through or over said tract or any part thereof so long as it shall remain the property of said corporation without the consent of the Board of Directors of said University expressed by resolution formally entered upon the minutes of the their proceedings.

"This act shall be in force from and after its passage.

"Approved February 12, 1857."

[fol. 8] That the last mentioned amendatory act was immediately and duly accepted by said Eliot Seminary as an amendment to the charter thereof then previously in force, and that said new corporate name of said "The Washington University" was immediately adopted, and ever since has been and now is used by and constitutes the proper name of the plaintiff corporation.

3. That since its creation by the original act of the General Assembly of the State of Missouri above set forth, plaintiff has constantly been actively engaged and employed in the legitimate prosecution of the purposes of its incorporation in and under its said charter heretofore set forth. That it has erected, built up, and established in the City of St. Louis and partly in said City of St. Louis and County of St. Louis, and has ever maintained and now maintains, schools of a high order for the education of the young of both sexes, largely attended, both by night and by day, including professional schools and a wide range of university extension courses for the benefit of those unable to attend the regular classes or curriculum of the plaintiff, at an annual expense to plaintiff of approximately two million three hundred thousand dollars ($2,300,000.00); that such

annual expenditure is far in excess of any income derived, or that could be derived, by the plaintiff from the fees paid [fol. 9] it, and that its total income from its schools is not in excess of approximately one million, two hundred thousand dollars ($1,200,000.00).

4. That various persons, institutions and foundations, in reliance upon and in consideration of the provisions of said acts of incorporation hereinabove set forth, and the exemption from taxation thereby conferred, have devised, bequeathed, conveyed, given and granted large amounts of money and property to this plaintiff, in aid of its purposes; that by such devises, bequests, conveyances, gifts and grants, or from the proceeds thereof, this plaintiff has acquired a large amount of property, real as well as personal, in the City of Kansas City, and elsewhere, and now owns and administers the same.

That all the profit, income and revenue from the said property is being devoted and has ever been devoted to and is necessary for the maintenance of its said schools, the payment of its professors and instructors, now numbering in all approximately 765, the erection and maintenance of buildings and other equipment necessary for the efficient conduct of its said schools and the teaching and training of its students.

That among the said properties so acquired and owned by plaintiff, and all the profit, income and revenue whereof has been and is being devoted as aforesaid, are those located in the City of Kansas City, Missouri, and described as follows:

[fol. 10] All of Lots six (6) and seven (7), Block two (2) Ashburn's Addition to the City of Kansas, now Kansas City, Missouri, according to the recorded plat thereof.

All of Lot three hundred thirteen (313) (except part thereof in Main Street) in Block twenty-four (24), McGee's Addition to the City of Kansas, now Kansas City, Missouri, according to the recorded plat thereof, being a tract or parcel of land fronting 49 feet 6 inches on the east line of Main Street by a depth eastwardly between parallel lines and along the north line of East Seventeenth Street, 113 feet 6 inches to an alley.

All of an undivided one-half interest in Lot ten (10) in Block six (6), McDaniel's Addition, an addition in Kansas City, Jackson County, Missouri.

That all of said properties were owned by the plaintiff on and prior to January 1, 1933, and at the time the taxes hereinafter complained of were assessed, and ever since have been and now are owned, by plaintiff; that by virtue of the contract of the State of Missouri, set forth and contained in plaintiff's charter, and accepted and long relied and acted upon by plaintiff and others the said properties, and each and every part and parcel thereof, are and ever have been, exempt from all taxation.

That by reason of the said statutes and the said contract, which constitute and ever have been laws of the State of [fol. 11] Missouri, the said property and each and every item and parcel thereof, have been segregated and set apart from the realm of taxable property, and are and ever have been beyond the power and jurisdiction, for purposes of taxation, of any assessors, boards or officers of the State of Missouri and/or of the City of Kansas City, and any attempt on their part or on the part of any of them, to assess taxes upon or collect the same from said property, or any item or parcel thereof, is and ever has been utterly without jurisdiction and void.

5. That on October 30, 1875, the people of the State of Missouri adopted a new Constitution, which went into effect on November 30, 1875, which Constitution became and was made by such vote of adoption and has ever since remained the supreme law of the State of Missouri, subject only to the Constitution of the United States; that by Sections 6 and 7 of Article X of the said Constitution, it was and is provided, as follows:

"Sec. 6. Property exempt from taxation.—The property, real and personal, of the State, counties and other municipal corporations, and cemeteries, shall be exempt from taxation. Lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, may be exempted from taxation, when the same are used exclusively for purposes purely charitable; also, [fol. 12] such property, real or personal, as may be used exclusively for agricultural or horticultural societies; Provided, That such exemption shall be only by general law.

"Sec. 7. Other exemptions void.—All laws exempting property from taxation, other than the property above enumerated, shall be void."

That as applied to this plaintiff and its property, the said constitutional provisions and the said laws of the State of Missouri thereby undertaken to be expressed are null and void, as being contrary to and in violation of Section 10 of Article I of the Constitution of the United States, which provides, among other things, that no state shall pass any law impairing the obligation of contracts.

That by Sections 9742-43, of the Revised Statutes of Missouri 1929, it is and has been provided ever since the year 1879 as follows:

"Sec. 9742. Property taxable for state purposes.—For the support of the government of the state, the payment of the public debt and the advancement of the public interest, taxes shall be levied on all property, real and personal, except as stated in the next section.

"Sec. 9743. Exemptions therefrom.—The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; second, lands and lots, public buildings and structures with their furniture and [fol. 13] equipments, belonging to the United States; third, lands and other property belonging to this state; fourth, lands and other property belonging to any city, county or other municipal corporation in this state, including market houses, town halls, and other public structures, with their furniture and equipments and all public squares and lots kept open for health, use or ornament; fifth, lands or lots of ground granted by the United States or this state to any county, city or town, village or township, for the purpose of education, until disposed of to individuals by sale or lease; sixth, lots in incorporated cities or towns, or within one mile of the limits of any such city or town, to the *the* extent of one acre, and lots one mile or more distant from such cities or towns, to the extent of five acres, with the buildings thereon, when the same are used exclusively for religious worship, for schools, or for purposes purely charitable, shall be exempted from taxation for state, county or local purposes."

That as applied to this plaintiff and its property, the said Sections 9742-43, of the Revised Statutes of Missouri,

1929, above set forth, are null and void, as being contrary to and in violation of said Section 10 of Article I of the Constitution of the United States, which provides, among other things, that no state shall pass any law impairing the obligation of contracts.

6. That the defendant H. J. Gorman is the duly appointed, qualified and acting Treasurer of Kansas City, Missouri, and is the officer authorized and directed by the Charter and Ordinances of such city to collect delinquent city taxes [fol. 14] by sale of the real estate upon which such taxes are levied, and is now engaged in discharging his duties as such Treasurer in the collection of general city taxes in Kansas City, Missouri.

That the defendant Frank McCabe is the duly appointed, qualified and acting Assessor of Kansas City, Missouri, and is the officer authorized and directed by the Charter of such City to assess city taxes on real estate in Kansas City, Missouri, and certify the amount of such taxes to the City Treasurer of Kansas City, and is now engaged in discharging his duties as such Assessor in the assessment of general city taxes in Kansas City, Missouri.

7. That notwithstanding plaintiff's exemption from taxation so contracted for by the Acts of the General Assembly constituting plaintiff's charter and accepted and relied upon by plaintiff and its donors, defendant Frank McCabe as the Assessor of Kansas City, Missouri, acting and professing to act under said sections of the Missouri Constitution above set forth and under said Statutes of the State of Missouri and under the Charter and Ordinances of Kansas City, Missouri has illegally and without any right or jurisdiction, attempted to assess for taxation as against this plaintiff and has assessed as against this plaintiff, the real estate hereinabove described as being owned by plaintiff and pursuant thereto and acting and [fol. 15] professing to act under like authority, defendant H. J. Gorman as Treasurer of Kansas City, Missouri, has demanded of plaintiff payment of general city taxes as follows:

Undivided ½ Int. Lot 10, Block 6, McDaniel's Addition 1933 taxes $23.71

amounting in the aggregate to $23.71. A copy of such tax bill marked Exhibit A is attached hereto and made a part

hereof. Said defendant has advertised the said property for sale for nonpayment of such taxes, as provided by law, and has sold or is about to sell the same, and unless enjoined and restrained by decree of this Court, will proceed to enforce payment of said taxes against and out of the property of the plaintiff and sell the same and issue assignable certificates of purchase to purchaser thereof, all to plaintiff's great and irreparable damages.

8. That the said tax bills, tax sales and certificates of purchase constitute clouds and encumbrances on plaintiff's title and plaintiff is unable to sell or convert into money any of its said real property without paying the said tax bills, although plaintiff's situation renders it necessary and expedient that some of such property be sold for the purpose of raising money for the conduct and maintenance of its schools.

That said tax bills and certificates of purchase, if issued, [fol. 16] will continue to constitute, unless cancelled, such cloud and encumbrance, and said defendants will continue to assess and endeavor to collect such taxes unless restrained, and that plaintiff has no adequate remedy at law.

9. That in the year 1865, and after the enactment and acceptance of plaintiff's charter, as aforesaid, and after the amendment and the acceptance of the amendment thereof, the State of Missouri undertook to adopt and enact, and did adopt and enact a new Constitution, constituting the supreme law of said state, subject to the Federal Constitution; which supreme law provided that no property, real or personal, should be exempt from taxation except such as may be used exclusively for public schools and such as may belong to the United States, to the State of Missouri, and to counties, and to municipal corporations of the State; and it prohibited the Legislature from entering into any contract exempting the property of an individual from taxation.

Thereupon, the General Assembly of the State of Missouri at once provided for the taxation of all property belonging to eleemosynary corporations, and not included within said constitutional exemptions of 1865.

That pursuant to the said constitutional provisions and to the said statutes, the officers of St. Louis County (of which the City of St. Louis then formed a part) were as- [fol. 17] serting the right, and were proceeding under the

new constitutional and statutory provisions aforesaid, to undertake to assess and collect taxes upon the property of this plaintiff.

That in the year 1866, one Edward S. Rowse was the duly elected, qualified and acting Collector of the Revenue of St. Louis County, Missouri, of which County the City of St. Louis then formed a part, and within which County said City was then contained; that in said year, the officers of the said County of St. Louis, then authorized by law to assess property in said County for state, county and school taxes, proceeded to assess state, county and school taxes for the year 1866 against sundry parcels of land and improvements thereon situated in the said County of St. Louis which were owned by the plaintiff herein, and which had been the property of the plaintiff herein at and before the time of such assessment; that bills for such taxes so assessed for the year 1866 were made out by the officers of said County of St. Louis authorized to make out tax bills, and were delivered to the said Edward S. Rowse, Collector of Revenue of St. Louis County, Missouri, for enforcement and collection in the manner then provided by law.

That the total amount of said tax bills so made out and delivered to the said Edward S. Rowse, Collector as aforesaid, was some $3,519.04.

[fol. 18] That the said Edward S. Rowse, Collector as aforesaid, thereupon demanded the payment of said tax bills, and payment thereof having been refused by plaintiff, the said Edward S. Rowse, as Collector aforesaid, threatened and was about to proceed to collect the said taxes so assessed by levy upon and sale of the said lands.

That thereupon the plaintiff filed a suit as plaintiff in the St. Louis Circuit Court of St. Louis County, Missouri, to the October Term, 1867, against the said Edward S. Rowse, as Collector of the Revenue of St. Louis County, Missouri, as defendant. That by its bill or petition in said suit, the plaintiff set out and averred the passage of the Acts of the General Assembly of the State of Missouri hereinabove set forth, and its acceptance, organization and conduct under and in pursuance of and in the exercise of the powers and franchises to it granted by the said Acts; the gift, grant, legacy and devise to it, from various and sundry persons, and its acquisition, of a large amount of real and personal property in the County of St. Louis;

the assessment of the taxes and the levy of tax bills for the year 1866, as hereinabove set forth; the demand of payment of said tax bills, the refusal thereof, and the threatened collection and enforcement thereof by levy upon and sale of said lands by the said Edward S. Rowse, as Collector, as aforesaid.

[fol. 19] Plaintiff further set forth in its bill or petition that by reason of the provisions of said first mentioned Act of the General Assembly of Missouri, approved February 22, 1853, and of said Act amendatory thereof above set forth, said taxes were illegally assessed and were not, nor any part thereof, lawfully due from or payable by the plaintiff, for the reason that all property of plaintiff was, by said Acts of the General Assembly of Missouri, expressly exempt from taxation at all times; that the acts of the said Edward S. Rowse, Collector as aforesaid, defendant in said petition or bill, were such as to constitute and cast a cloud upon the title of plaintiff to the real property covered by the said tax bills; that the same questions were apt to and would constantly arise in each successive year in respect to successive tax bills made out and assessed against the plaintiff with respect to its property; and plaintiff, therefore, prayed in its said bill or petition, the court for its order and decree enjoining and restraining the said Edward S. Rowse, Collector as aforesaid, from collecting by levy and sale, the money claimed for taxes in and by said tax bills, or any part thereof, and from offering the said lands, or any part thereof, for sale, for any taxes alleged to have been assessed against the same, and that defendant be adjudged to pay the costs of the proceeding, and for other relief.

[fol. 20] That thereupon pursuant to the prayer of said petition or bill duly filed in the office of the Clerk of the St. Louis Circuit Court aforesaid, the said Edward S. Rowse, Collector of the Revenue of St. Louis County, Missouri, was duly summoned and commanded to appear in the said St. Louis Circuit Court at the October Term, 1867, thereof.

And thereupon the plaintiff moved for the issuance of a temporary injunction and restraining order against the said Edward S. Rowse, Collector as aforesaid, defendant, and such temporary injunction and restraining order was granted and ordered by the Court, wherein and whereby the said Edward S. Rowse, as Collector of the Revenue of

St. Louis County, Missouri was enjoined and restrained from collecting the taxes mentioned and set out in plaintiff's petition or bill of complaint, or from enforcing the collection thereof by sale of the property mentioned therein, under and by reason of the grounds set forth in plaintiff's said petition or bill of complaint.

That the said defendant, Edward S. Rowse, Collector as aforesaid, appeared at and to the said October Term, 1867, in and before the said St. Louis Circuit Court and filed a demurrer in said cause, wherein and whereby the said defendant demurred to the petition of plaintiff upon the ground that it did not set forth facts sufficient to constitute a cause of action, and for special cause of demurrer, [fol. 21] showed that the plaintiff, by its petition or bill of complaint, did not make such a case as entitled it to the relief prayed by its said bill of complaint or petition against the defendant.

That thereafter, to-wit, on or about the 21st day of December, 1867, the said demurrer to plaintiff's petition or bill of complaint having come on to be heard and being heard, the said demurrer was overruled by the said Court with costs; that thereupon the said Edward S. Rowse, as Collector of the Revenue of St. Louis County, Missouri, declined to plead further, and it was ordered by the said Court that final judgment be and the same was entered for the plaintiff. It was, therefore, duly considered and adjudged by the said Court that the temporary injunction theretofore granted be and the same was made perpetual, and that the plaintiff recover of defendant its costs and charges in this behalf expended.

That thereupon, and within the time and in the manner allowed by law, the said defendant, Edward S. Rowse, Collector as aforesaid, sued out and obtained from the Supreme Court of Missouri a writ of error to the said St. Louis Circuit Court to review its judgment and decree in the cause aforesaid; that the said writ of error and the record in said cause came on for hearing and for examination before the said Supreme Court of Missouri in the year [fol. 22] 1868, and the said cause was reviewed on error by the said Supreme Court of Missouri, and its judgment is reported in Volume 42, at page 308, of the published reports of the Supreme Court of the State of Missouri; that by its judgment, the Supreme Court of Missouri held that the exemption from taxation under its charter, as-

serted by plaintiff did not exist as against subsequent state laws, reversed the judgment theretofore rendered by the said St. Louis Circuit Court, and ordered plaintiff's petition dismissed.

That thereafter, and within the time and in the manner allowed by law, the plaintiff sued out and obtained from the Supreme Court of the United States a writ of error addressed to the Supreme Court of Missouri to review and reexamine the decree and decision of said last mentioned Court, upon the ground that said decree and decision was contrary to the rights claimed and asserted by the plaintiff, under the Constitution of the United States, which forbade any state to pass any law impairing the obligation of contracts.

That the said cause and the record therein, pursuant to the said writ of error, came on to be heard and was heard by and before the Supreme Court of the United States on the 23rd day of November, 1869, and was argued and [fol. 23] submitted to said Supreme Court of the United States for its decision.

That thereupon and thereafter, to-wit, on the 20th day of December, 1869, the Supreme Court of the United States gave and rendered its judgment and decision, reported as *The Washington University* v. *Rouse*, 75 U. S. (8 Wall.) 439 19 L. Ed. 498, and held that the charter of plaintiff constituted a contract which afforded to plaintiff a permanent exemption from taxation, any subsequent laws of the state notwithstanding, and the judgment of the Supreme Court of Missouri, was, therefore, reversed, and the cause remanded to said latter Court, with directions to proceed in conformity with the decision and opinion of the Supreme Court of the United States.

That thereafter, to-wit, on the 14th day of May, 1870, plaintiff, by its counsel, appeared before the Supreme Court of Missouri and moved said Court in compliance with the mandate and decision of the Supreme Court of the United States, to set aside and vacate its former judgment reversing the judgment of the St. Louis Circuit Court aforesaid, and to affirm the judgment of the St. Louis Circuit Court; that thereupon the Supreme Court of Missouri ordered and adjudged that its former judgment in the said cause be vacated and that the judgment of the said St. Louis Circuit Court be and the same was, in all things

[fol. 24] affirmed and ordered to stand in full force and effect.

10. Plaintiff further states that thereafter in the year 1931 the assessor of the City of St. Louis, then authorized by law to assess property in said city for state, city and school taxes, proceeded to assess state, city and school taxes as of June 1, 1931, due December 31, 1932 against sundry parcels of land and improvements thereon situated in the city of St. Louis, which were owned by the plaiptiff herein and which had been the property of the plaintiff herein at and before the time of such assessment; that bills for such taxes so assessed for the year 1931 aggregating $183,003.77 were made out by the officers of said City of St. Louis authorized to make out tax bills and were delivered to Edmond Koeln, the duly elected, qualified and acting Collector of Revenue in and for the City of St. Louis for enforcement and collection in the manner provided by law.

That the said Edmond Koeln, collector as aforesaid, thereupon demanded the payment of said tax bills and the payment thereof having been refused by plaintiff, the said Edmond Koeln, as collector aforesaid, threatened and was about to proceed to collect the said taxes so assessed by levy upon and sale of the said lands.

That thereupon on March 30, 1933, the plaintiff herein filed a suit as plaintiff in the Circuit Court of the City [fol. 25] of St. Louis against said Edmond Koeln, as collector of the City of St. Louis, as defendant, substantially identical with this petition, except for appropriate change of name of defendant, description of properties, amount of taxes, and except for this paragraph: that by its bill or petition in said suit plaintiff set out and averred the passage of the Acts of the General Assembly of the State of Missouri hereinabove set forth, and its existence, organization and conduct under and in pursuance of and in the exercise of the powers and franchises granted to it by said Acts, the gift, grant, legacy and devise to it from various and sundry persons and its acquisition of a large amount of real and personal property in the City of St. Louis and elsewhere, the assessment of the taxes and the levy of tax bills as hereinabove set forth, the demand of payment of said tax bills, the refusal thereof and the threatened col-

lection and enforcement thereof by levy upon and sale of said lands by said Edmond Koeln as collector as aforesaid.

Plaintiff further alleged in its bill or petition in such suit that by reason of the provisions of the said Act of the General Assembly of Missouri approved February 22, 1853, and of said Act amendatory thereof, above set forth, said taxes were illegally assessed and were not, nor any part thereof, lawfully due from or payable by the plaintiff, [fol. 26] for the reason that all property of plaintiff was by said Acts of the General Assembly of Missouri, expressly exempt from taxation at all times; that the judgment of the Supreme Court of the United States and the judgment of the St. Louis Circuit Court and of the Supreme Court of Missouri set forth in paragraph 9 hereof, constituted a title, right, privilege and immunity of plaintiff under the Constitution and statutes of the United States so that plaintiff was entitled under its charter and the Acts of the General Assembly of the State of Missouri composing the same to a permanent exemption of all its property from taxation and that the issues in such suit had been actually litigated, determined and adjudged by the former judgments above referred to; that the acts of the said Edmond Koeln, collector as aforesaid, defendant in said bill or petition, were such as to constitute and cast a cloud upon the title of plaintiff to the real property covered by the said tax bills; that the same questions were apt to and would constantly arise in each successive year in respect to successive tax bills made out and assessed against the plaintiff with respect to its property; and plaintiff, therefore, prayed in its said bill or petition for an order and decree of the Court restraining the said Edmond Koeln, collector as aforesaid, from collecting by levy and sale, the [fol. 27] money claimed for taxes in and by said tax bills or any part thereof, and from offering the said lands, or any part thereof, for sale for any taxes alleged to have been assessed against the same and for other appropriate relief.

That thereupon the said Edmond Koeln collector as aforesaid, appeared and filed his demurrer to plaintiff's petition therein and motion to dismiss the same on the ground that said petition did not state facts sufficient to constitute a cause of action, which demurrer and motion were overruled by Court; that thereupon on December 12, 1933, the said defendant Edmond Koeln, collector as aforesaid, filed

his answer to plaintiff's petition denying each and every allegation in plaintiff's petition and not specifically admitted therein, and stating that each and every parcel of real estate described in plaintiff's petition was under the Constitution and laws of the State of Missouri subject to taxation and not exempt from any taxes and that plaintiff had a full, complete and adequate remedy at law; that thereafter the said cause came on regularly for trial at the February, 1934, Term of the Circuit Court of the City of St. Louis and at the close of plaintiff's case defendant demurred to the evidence and rested upon said demurrer and the Court entered its judgment in favor of plaintiff and against the defendant and ordered that a permanent injunction be issued against defendant; that thereafter [fol. 28] within the time and in the manner allowed by law the said defendant Edmond Koeln, collector as aforesaid, appealed from the judgment of the Circuit Court of the City of St. Louis to the Supreme Court of Missouri, and after the lodgment of such appeal, W. F. Baumann, successor in office to said Edmond Koeln, was substituted as appellant; that thereafter on July 30, 1937, the Supreme Court of Missouri rendered its judgment and decision (reported as *Washington University* v. *Baumann*, 108 S. W. (2d) 403) affirming the judgment of the Circuit Court of the City of St. Louis, holding that under the charter and the Acts of the General Assembly of the State of Missouri, hereinabove set out, all property of plaintiff, whether or not occupied and directly used for educational purposes, was exempt from taxation and that such charter was a valid contract with the State of Missouri that could not be impaired by subsequent legislation and that plaintiff was entitled to the equitable relief prayed for therein being substantially identical with the relief prayed for herein, having no plain, adequate or complete remedy at law.

11. That the judgment aforesaid rendered by the Supreme Court of the United States constitutes a title, right, privilege and immunity which is especially set up and claimed by the plaintiff, under the Constitution and Stat- [fol. 29] utes of the United States, as under a commission held and authority exercised under the United States; that by and under the said judgment so rendered, plaintiff is entitled, under its charter and under the acts of the General Assembly of the State of Missouri composing the same

hereinbefore set forth, to a permanent exemption of all its property from taxation, including the property hereinbefore described as now being sought to be taxed.

That the judgment of the Supreme Court of the United States and the judgments of the St. Louis Circuit Court above described, and the judgments of the Supreme Court of Missouri, affirming in all things the said judgments of the St. Louis Circuit Court, have ever since remained, and now are, in full force and effect; that the controversies so adjudged and determined by the said judgments and the causes of action, and the issues, and the subject-matter were the same as involved in this instant suit, and the proceedings in the former suits aforesaid were taken for the same purpose, and the same points and questions were actually litigated and decided in said former suits and proceedings, and the present defendants are bound by said judgments and decisions in said former suits and proceedings.

Wherefore, the premises considered, plaintiff prays the Court to order, adjudge and decree:

[fol. 30] First. That the parcels of property, and each of them, described in plaintiff's amended petition as owned by plaintiff were and are, under the Acts of the General Assembly of the State of Missouri incorporating plaintiff and constituting its charter, exempt from taxation;

Second. That by reason of said charter exemption and said laws, the assessment and levy of taxes upon the said property and the issuance of tax bills against the same were and are contrary to law and void;

Third. That the tax bills made out and issued for the 1933 taxes against the said property, and any parcels thereof, were and are unauthorized by law and void;

Fourth. That the said tax bills, and each of them, and any re-issues or renewals thereof, or certificates of purchase, if any, ought to be and are ordered cancelled;

Fifth. That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants, be temporarily enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Sixth. That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be forever enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

[fol. 31] Seventh. That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be temporarily enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or re-issues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof;

Eighth. That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be finally and forever enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or re-issues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof; and that the Court grant the plaintiff such other and further relief, whether of the same or of different character, as to the Court under the facts and circumstances set forth shall seem just and proper.

[fol. 32] Count II

For its second and further cause of action against defendants plaintiff repeats and incorporates by reference with the same force and effect as if actually repeated herein, all the allegations and averments set forth in paragraphs or sections, 1, 2, 3, 4, 5 and 6 of Count I of this amended petition and further states 7:

7. That notwithstanding plaintiff's exemption from taxation so contracted for by the Acts of the General Assembly constituting plaintiff's charter and accepted and relied upon by plaintiff and its donors, defendant Frank McCabe as the Assessor of Kansas City, Missouri, acting and professing to act under said sections of the Missouri Constitution above set forth and under said Statutes of the State of

Missouri and under the Charter and Ordinances of Kansas City, Missouri has illegally and without any right or jurisdiction, attempted to assess for taxation as against this plaintiff and has assessed as against this plaintiff, the real estate hereinabove described as being owned by plaintiff and pursuant thereto and acting and professing to act under like authority, defendant H. J. Gorman as Treasurer of Kansas City, Missouri, has demanded of plaintiff payment of general city taxes as follows:

Undivided ½ Int. Lot 10, Block 6, McDaniel's Addition	1934 taxes	$ 45.07
[fol. 33] Lots 6 and 7, Block 2, Ashburn's Addition	1934 taxes	3333.46
Lot 313, Block 24, McGee's Addition	1934 taxes	3866.84

amounting in the aggregate to $7245.37 at this time. Copies of such tax bills marked Exhibits B, C and D respectively are attached hereto and made a part hereof. Said defendant has advertised the said properties for sale for nonpayment of such taxes, as provided by law, and has sold or is about to sell the same, and unless enjoined and restrained by decree of this Court, will proceed to enforce payment of said taxes against and out of the property of the plaintiff and sell the same and issue assignable certificates of purchase to purchaser thereof, all to plaintiff's great and irreparable damage.

Plaintiff further repeats and incorporates by reference with the same force and effect as if actually repeated herein all the allegations and averments set forth in paragraphs or sections 8, 9, 10 and 11 of Count I of this amended petition.

Wherefore, the premises considered, plaintiff prays the Court to order, adjudge and decree:

First. That the parcels of property, and each of them, described in plaintiff's amended petition as owned by plaintiff were and are, under the Acts of the General Assembly [fol. 34] of the State of Missouri incorporating plaintiff and constituting its charter, exempt from taxation;

Second. That by reason of said charter exemption and said laws, the assessment and levy of taxes upon the said

property and the issuance of tax bills against the same were and are contrary to law and void;

Third. That the tax bills made out and issued for the 1934 taxes against the said property, and any parcels thereof, were and are unauthorized by law and void;

Fourth. That the said tax bills, and each of them, and any re-issues or renewals thereof, or certificates of purchase, if any, ought to be and are ordered cancelled;

Fifth. That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be temporarily enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Sixth. That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be forever enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Seventh. That the defendant, H. J. Gorman, as Treasurer [fol. 35] of Kansas City, Missouri, his deputies, agents and servants, be temporarily enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or re-issues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof;

Eighth. That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be finally and forever enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or re-issues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof; and that the Court grant the plaintiff such other and further relief, whether of the same or of different character, as to the Court under the facts and circumstances set forth shall seem just and proper.

Count III

For its third and further cause of action against defend-
[fol. 36] ants plaintiff repeats and incorporates by reference with the same force and effect as if actually repeated herein, all the allegations and averments set forth in paragraphs or sections 1, 2, 3, 4, 5 and 6 of Count I of this amended petition and further states 7:

7. That notwithstanding plaintiff's exemption from taxation so contracted for by the Acts of the General Assembly constituting plaintiff's charter and accepted and relied upon by plaintiff and its donors, defendant Frank McCabe as the Assessor of Kansas City, Missouri, acting and professing to act under said sections of the Missouri Constitution above set forth and under said Statutes of the State of Missouri and under the Charter and Ordinances of Kansas City, Missouri has illegally and without any right or jurisdiction, attempted to assess for taxation as against this plaintiff and has assessed as against this plaintiff, the real estate hereinabove described as being owned by plaintiff and pursuant thereto and acting and professing to act under like authority, defendant H. J. Gorman as Treasurer of Kansas City, Missouri, has demanded of plaintiff payment of general city taxes as follows:

Undivided ½ Int. Lot 10, Block 6, McDaniel's Addition	1935 taxes	$ 42.70
Lots 6 and 7, Block 2, Ashburn' Addition	1935 taxes	2608.58
Lot 313, Block 24, McGee's Addition	1935 taxes	3662.49

[fol. 37] amounting in the aggregate to $6313.77 at this time. Copies of such tax bills, marked Exhibits E, F and G respectively are attached hereto and made a part hereof. Said defendant has advertised the said properties for sale for nonpayment of such taxes, as provided by law, and has sold or is about to sell the same, and unless enjoined and restrained by decree of this Court, will proceed to enforce payment of said taxes against and out of the property of the plaintiff and sell the same and issue assignable certificates of purchase to purchaser thereof, all to plaintiff's great and irreparable damage.

Plaintiff further repeats and incorporates by reference with the same force and effect as if actually repeated

herein all the allegations and averments set forth in paragraphs or sections 8, 9, 10 and 11 of Count I of this amended petition.

Wherefore, the premises considered plaintiff prays the Court to order, adjudge and decree:

First. That the parcels of property, and each of them, described in plaintiff's amended petition as owned by plaintiff were and are, under the Acts of the General Assembly of the State of Missouri incorporating plaintiff and constituting its charter, exempt from taxation;

Second. That by reason of said charter exemption and [fol. 38] said laws, the assessment and levy of taxes upon the said property and the issuance of tax bills against the same were and are contrary to law and void;

Third. That the tax bills made out and issued for the 1935 taxes against the said property, and any parcels thereof, were and are unauthorized by law and void;

Fourth. That the said tax bills, and each of them, and any re-issues or renewals thereof, or certificates of purchase, if any, ought to be and are ordered cancelled;

Fifth. That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be temporarily enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Sixth. That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be forever enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Seventh. That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be temporarily enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, [fol. 39] for the enforcement or collection of any of said tax bills, or any renewals or re-issues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof;

Eighth. That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be finally and forever enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or reissues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof; and that the Court grant the plaintiff such other and further relief, whether of the same or of different character, as to the Court under the facts and circumstances set forth shall seem just and proper.

Count IV

For its fourth and further cause of action against defendants plaintiff repeats and incorporates by reference with the same force and effect as if actually repeated herein, all the allegations and averments set forth in paragraphs [fol. 40] or sections 1, 2, 3, 4, 5 and 6 of Count I of this amended petition and further states 7:

7. That notwithstanding plaintiff's exemption from taxation so contracted for by the Acts of the General Assembly constituting plaintiff's charter and accepted and relied upon by plaintiff and its donors, defendant Frank McCabe as the Assessor of Kansas City, Missouri, acting and professing to act under said sections of the Missouri Constitution above set forth and under said Statutes of the State of Missouri and under the Charter and Ordinances of Kansas City, Missouri has illegally and without any right or jurisdiction, attempted to assess for taxation as against this plaintiff and has assessed as against this plaintiff, the real estate hereinabove de-cribed as being owned by plaintiff and pursuant thereto and acting and professing to act under like authority, defendant H. J. Gorman as Treasurer of Kansas City, Missouri, has demanded of plaintiff payment of general city taxes as follows:

Undivided ½ Int. Lot 10, Block 6, McDaniel's Addition	1936 taxes	$ 19.77
Lots 6 and 7, Block 2, Ashburn's Addition	1936 taxes	2376.94
Lot 313, Block 24, McGee's Addition	1936 taxes	3328.12

amounting in the aggregate to $5724.83 at this time. Copies [fol. 41] of such tax bills, marked Exhibits H, I and J respectively are attached hereto and made a part hereof. Said defendant has advertised the said properties for sale for nonpayment of such taxes, as provided by law, and has sold or is about to sell the same, and unless enjoined and restrained by decree of this Court, will proceed to enforce payment of said taxes against and out of the property of the plaintiff and sell the same and issue assignable certificates of purchase to purchaser thereof, all to plaintiff's great and irreparable damage.

Plaintiff further repeats and incorporates by reference with the same force and effect as if actually repeated herein all the allegations and averments set forth in paragraphs or sections 8, 9, 10 and 11 of Count I of this amended petition.

Wherefore, the premises considered, plaintiff prays the Court to order, adjudge and decree:

First: That the parcels of property, and each of them, described in plaintiff's amended petition as owned by plaintiff were and are, under the Acts of the General Assembly of the State of Missouri incorporating plaintiff and constituting its charter, exempt from taxation;

Second: That by reason of said charter exemption and said laws, the assessment and levy of taxes upon the said [fol. 42] property and the issuance of tax bills against the same were and are contrary to law and void;

Third: That the tax bills made out and issued for the 1936 taxes against the said property, and any parcels thereof, were and are unauthorized by law and void;

Fourth: That the said tax bills, and each of them, and any re-issues or renewals thereof, or certificates of purchase, if any, ought to be and are ordered cancelled;

Fifth: That the defendant Frank McCabe, as Assessor of Kansas City, Missouri his deputies, agents and servants be temporarily enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Sixth: That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be forever enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Seventh: That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be temporarily enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the [fol. 43] enforcement or collection of any of said tax bills, or any renewals or re-issues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof;

Eighth: That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be finally and forever enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or reissues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or re-issues thereof; and that the Court grant the plaintiff such other and further relief, whether of the same or of different character, as to the Court under the facts and circumstances set forth shall seem just and proper.

Count V

For its fifth and further cause of action against defendants plaintiff repeats and incorporates by reference with the same force and effect as if actually repeated herein, all the allegations and averments set forth in paragraphs or sections 1, 2, 3, 4, 5 and 6 of Count I of this amended petition and further states 7:

[fol. 44] 7. That notwithstanding plaintiff's exemption from taxation so contracted for by the Acts of the General Assembly constituting plaintiff's charter and accepted and relied upon by plaintiff and its donors, defendant Frank McCabe as the Assessor of Kansas City, Missouri, acting and professing to act under said sections of the Missouri Constitution above set forth and under said Statutes of the State of Missouri and under the Charter and Ordinances of Kansas City, Missouri has illegally and without any right or jurisdiction, attempted to assess for taxation as against this plaintiff and has assessed as against this plaintiff, the

real estate hereinabove described as being owned by plaintiff and pursuant thereto and acting and professing to act under like authority, defendant H. J. Gorman as Treasurer of Kansas City, Missouri, has demanded of plaintiff payment of general city taxes as follows:

Undivided ½ Int. Lot 10, Block 6, McDaniel's Addition	1937 taxes	$ 17.62
Lots 6 and 7, Block 2, Ashburn's Addition	1937 taxes	2131.80
Lot 313, Block 24, McGee's Addition	1937 taxes	2898.89

amounting in the aggregate to $5048.31 at this time. Copies of such tax bills, marked Exhibits K, L and M respectively are attached hereto and made a part hereof. Said de-
[fol. 45] fendant has advertised the said properties for sale for nonpayment of such taxes, as provided by law, and has sold or is about to sell the same, and unless enjoined and restrained by decree of this Court, will proceed to enforce payment of said taxes against and out of the property of the plaintiff and sell the same and issue assignable certificates of purchase to purchaser thereof, all to plaintiff's great and irreparable damage.

Plaintiff further repeats and incorporates by reference with the same force and effect as if actually rep-ated herein all the allegations and averments set forth in paragraphs or sections 8, 9, 10 and 11 of Count I of this amended petition.

Wherefore, the premises considered, plaintiff prays the Court to order, adjudge and decree:

First: That the parcels of property, and each of them, described in plaintiff's amended petition as owned by plaintiff were and are, under the Acts of the General Assembly of the State of Missouri incorporating plaintiff and constituting its charter, exempt from taxation;

Second: That by reason of said charter exemption and said laws, the assessment and levy of taxes upon the said property and the issuance of tax bills against the same were and are contrary to law and void;

[fol. 46] Third: That the tax bills made out and issued for the 1937 taxes against the said property, and any parcels thereof, were and are unauthorized by law and void;

Fourth: That the said tax bills, and each of them, and any re-issues or renewals thereof, or certificates of purchase, if any, ought to be and are ordered cancelled;

Fifth: That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be temporarily enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Sixth: That the defendant Frank McCabe, as Assessor of Kansas City, Missouri, his deputies, agents and servants be forever enjoined and restrained from assessing any general city taxes against any of plaintiff's said property;

Seventh: That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be temporarily enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or re-issues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, [fol. 47] the payment of any of said tax bills, or any renewals or re-issues thereof;

Eighth: That the defendant, H. J. Gorman, as Treasurer of Kansas City, Missouri, his deputies, agents and servants, be finally and forever enjoined and restrained from seizing, advertising, offering for sale or selling plaintiff's said property, or any parcel thereof, or any of plaintiff's property, for the enforcement or collection of any of said tax bills, or any renewals or reissues thereof, and from in any manner enforcing or collecting, or attempting to collect or enforce, the payment of any of said tax bills, or any renewals or reissues thereof; and that the Court grant the plaintiff such other and further relief, whether of the same or of different character, as to the Court under the facts and circumstances set forth shall seem just and proper.

Polk and Williams, McCune, Caldwell & Downing,
Attorneys for Plaintiff.

Duly sworn to by R. B. Caldwell. Jurat omitted in printing.

WEST

Tract No. 44493

Certificate of Redemption $ 23.71

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Jan 8 193

To Washington University

Address St. Louis, Mo

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that _____ Dollars and _____ Cents is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. _____ in the Book of Sales of 1933 being

Undiv 1/2 Int Lot 10, Block 6 McDaniel's Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		$
City Tax for the year _____ and Interest		$
" " " " " " "		$
" " " " " 1933 " "		$ 23.71
" " " " " " "		$
State and County Tax for the year _____ and Interest		$
" " " " " " " " " "		$
" " " " " " " " " "		$
Special Taxes for _____ and Interest		$
" " " _____ " " _____		$
Park Purchase Taxes		$
Repairs		$
	23.71	
Total		$

COUNTERSIGNED BY

Maurice Carey City Treas.

_____ Commissioner of Accounts By _____ Deputy.

Pontiac Pg. Co.—34493

Exhibit A

3174
42
6348
12696
13308
3174
4507

EAST KC

Tract No. 44564

Certificate of Redemption $ 4507

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 193 7

To Washington Mercantile

Address St Louis Mo

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that _____ Dollars and _____ Cents is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. _____ in the Book of Sales of 1934 being

Lot 10 Blk 6 McDonald Place

THIS RECEIPT INCLUDES THE FOLLOWING: 4507

Recording Fee		$
City Tax for the year 1934 and Interest		$
" " " " " ____ " "		$
" " " " " ____ " "		$
" " " " " ____ " "		$
State and County Tax for the year ____ and Interest		$
" " " " " " " ____ " "		$
" " " " " " " ____ " "		$
Special Taxes for ____ and Interest		$
" " " ____ " "		$
Park Purchase Taxes		$
Repairs		$
	Total	$ 4507

COUNTERSIGNED BY

Maurice Carey City Treas.

_____ Commissioner of Accounts

By _____ Deputy.

Eyh B

48-A

WEST

Tract No. 86757

Certificate of Redemption $ 3333.46

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 1927

To Washington University

Address St Louis Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that

Dollars and Cents

is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. in the Book of Sales of 1924 being

Lots 677 Old Ashburn's Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		3333.46
City Tax for the year 1924 and Interest		
" " " " " " "		
" " " " " " "		
State and County Tax for the year and Interest		
" " " " " " " "		
Special Taxes for and Interest		
" " "		
Park Purchase Taxes	10 cc	
Repairs		
Total		3333.46

COUNTERSIGNED BY

Maurice Carey City Treas.

By WC Deputy.

Commissioner of Accounts

Peaslee Pig. Co.—24422

Earl C 48-B

2347.51 42
1695.02
93900
95.95
2347.51
95.95
3338.46
2263.50
46.80

WEST

Tract No. 113845

Certificate of Redemption

38664

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 19 32

To Washington University

Address St Louis, Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that

Dollars and Cents

is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. in the Book of Sales of 1934 being

Lot 313 Blk 24 N. Gem Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		
City Tax for the year 1934 and Interest		38664
" " " " " " " "		
" " " " " " " "		
State and County Tax for the year and Interest		
" " " " " " " "		
" " " " " " " "		
Special Taxes for and Interest		
" " " " " "		
Park Purchase Taxes		
Repairs	Dec	
Total		38664

COUNTERSIGNED BY

Maurice Carey City Treas.

Commissioner of Accounts By Deputy.

Franklin Pig. Co.—34488

Exhibit Q 48-C

2723.13
42
54462
1089252
1143.714 6
7231 3
38664

2619 75
49.30

3285-
30
98550
3285-
42 70

EAST KC

Tract No. 44700

Certificate of Redemption $ 42 70

This Receipt is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 193 7

To Washington University

Address St Louis, Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that .....

..... Dollars and ..... Cents

is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. ..... in the Book of Sales of 1935 being .....

Lot 10 Blk 6 McDaniel Add

(under 1/3 Int) KC

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		42 70
City Tax for the year 1935 and Interest		$
" " " " " " " "		$
" " " " " " " "		$
" " " " " " " "		$
State and County Tax for the year ..... and Interest		$
" " " " " " " "		$
" " " " " " " "		$
Special Taxes for ..... and Interest		$
" " " ..... " "		$
Park Purchase Taxes		$
Repairs	Due	$
Total		$ 42 70

COUNTERSIGNED BY

Maurice Carey City Treas.

..... Commissioner of Accounts By ..... Deputy.

Publisher Pr. Co.- 04888

Exh E 48-D

WEST KC

Tract No. 87609

Certificate of Redemption $ 2608 58

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo. Dec 1937

To Washington University

Address St Louis Mo

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that .....

..... Dollars and ..... Cents

is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. 1 in the Book of Sales of 1935 being

Lots 697 Blk 2

Ashburns Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		$ 2608 58
City Tax for the year 1935 and Interest		$
" " " " " " " "		$
" " " " " " " "		$
State and County Tax for the year ____ and Interest		$
" " " " " " " "		$
Special Taxes for ____ and Interest		$
" " " " "		$
Park Purchase Taxes		$
Repairs Dec		$ 2608 58
Total		$ 2608 58

COUNTERSIGNED BY

Maurice Carey City Treas.

..... Commissioner of Accounts By ..... Deputy.

Brenner Pig. Co.—36888

Exhibit 3

48-E

2006.60 30
60.98 00
2066 60
2608 58

1908 00
58.50

WEST

Tract No. 115330

Certificate of Redemption

$3662.49

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo. Dec 1937

To Washington University

Address St Louis, Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that

Dollars and Cents

is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. in the Book of Sales of 1935 being

Lot 313 Blk 24, Mc Gees Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee	3662 49
City Tax for the year 1935 and Interest	
State and County Tax for the year and Interest	
Special Taxes for and Interest	
Park Purchase Taxes	Dec
Repairs	
Total	3662 49

COUNTERSIGNED BY

Maurice Carey City Treas.

Commissioner of Accounts By Deputy.

Penshaw Pa. Co.—24888

Exhibit 9 48-F

2817.30
845190
2817.30
366249

2699.75
61.62

1676
18
1340 8
1676 8
3016
3.16
16
19.77

EAST 10c

Tract No. 44367

Certificate of Redemption $ 1922

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo. Dec 1927

To Washington University

Address St Louis Mo

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that _____ Dollars and _____ Cents is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. _____ in the Book of Sales of 1926 being

Lot 10 Blk 6 McDaniels Add
(undiv. ½ int)

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		1922
City Tax for the year 1926 and Interest		
" " " " " _____ " "		
" " " " " _____ " "		
" " " " " _____ " "		
State and County Tax for the year _____ and Interest		
" " " " " " _____ " "		
" " " " " " _____ " "		
Special Taxes for _____ and Interest		
" " " _____ " "		
Park Purchase Taxes		
Repairs	Dec	
Total		1922

COUNTERSIGNED BY

Maurice Carey City Treas.

_____ Commissioner of Accounts By _____ Deputy.

Esh H.

48-G

Pedrick Pub. Co.—34000

WEST KC

Tract No. 86545

Certificate of Redemption $ 2376 94

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 1937

To Washington University

Address St Louis Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that ..... Dollars and ..... Cents is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. ..... in the Book of Sales of 1936 being

Lots 647 Blk. 2 Ashburn's add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		$ 2376 94
City Tax for the year 1936	and Interest	$
" " " " "	" "	$
" " " " "	" "	$
" " " " "	" "	$
State and County Tax for the year	and Interest	$
" " " " " "	" "	$
" " " " " "	" "	$
Special Taxes for	and Interest	$
" " "	" "	$
Park Purchase Taxes		$
Repairs Dec		$
Total		$ 2376 94

COUNTERSIGNED BY

Maurice Carey City Treas.

Commissioner of Accounts By Deputy.

Franklin Pr. Co.—34428

Exhibit 48-H

20067 27 18
160384
20067
36121
20067 4
2367

1405 00
58 50

2735 70
18
2189 56 0
23570
5924 26
2735 70
3328 12

WEST [illegible]

Tract No. 113398

Certificate of Redemption $ 3328.12

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 193 7

To Washington University

Address St Louis Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that ..... Dollars and ..... Cents is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. ..... in the Book of Sales of 1936 being

Lot 313 Blk 24 Mo Geo Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee	3328.12
City Tax for the year 1936 and Interest	$
" " " " " _____ " "	$
" " " " " _____ " "	$
" " " " " _____ " "	$
State and County Tax for the year _____ and Interest	$
" " " " " " " _____ " "	$
" " " " " " " _____ " "	$
Special Taxes for _____ and Interest	$
" " " _____ " " _____	$
Park Purchase Taxes	$
Repairs Dec	$
Total	3328.12

COUNTERSIGNED BY

Maurice Carey City Treas.

_____ Commissioner of Accounts By MC Deputy.

Publishers Pkg. Co.—20488

Eda J

48-I

1676
6
10056
1676
17 76

KC

EAST

Tract No. 45731

Certificate of Redemption

$ 17 76

This Receipt Is Not Valid Unless Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 1937

To Washington University

Address St Louis, Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that _____ Dollars and _____ Cents is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. _____ in the Book of Sales of 1937 being

Undiv ½ Lot 10, block 6 McDaniel's Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		$ 17 76
City Tax for the year 1937	and Interest	$
" " " " "	" "	$
" " " " "	" "	$
" " " " "	" "	$
State and County Tax for the year	and Interest	$
" " " " " " "	" "	$
" " " " " " "	" "	$
Special Taxes for	and Interest	$
" " "	" "	$
Park Purchase Taxes		$
Repairs Dec		$
Total		$ 17 76

Back '33-'34-'35 '36

COUNTERSIGNED BY

Maurice Carey City Treas.

By MC

Commissioner of Accounts

11

Exh K 48-J

2011 SS
6
12069 30
2011 11
2 13180

WEST CC

Tract No. 87568

Certificate of Redemption

$ 2131 80

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 1937

To Washington Mayorath

Address St Louis, Mo

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that ..... Dollars and ..... Cents is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. ..... in the Book of Sales of 1937 being Lots 6 & 7, Blk 2 Ashtonia Add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		2131 80
City Tax for the year 1937 and Interest		
" " " " " ____ " "		
" " " " " ____ " "		
" " " " " ____ " "		
State and County Tax for the year ____ and Interest		
" " " " " " " ____ " "		
" " " " " " " ____ " "		
Special Taxes for ____ and Interest		
" " " ____ " "		
Park Purchase Taxes Dec		
Repairs		
Total		2131 80

Bade
34-35 & 36
1912.50
58.75

COUNTERSIGNED BY

Maurice Carey City Treas.

..... Commissioner of Accounts By WC ..... Deputy.

Prentice Pig. Co.—24200

Ed L 48-K

27348 1
164086
27348
16408
28988

WEST

Tract No. 115273

Certificate of Redemption

$ 2898 89

This Receipt Is Not Valid Until Countersigned by Commissioner of Accounts

TAX PAYER'S COPY

Kansas City, Mo., Dec 193 7

To Washington Mutual

Address St Louis Mo.

I, MAURICE CAREY, City Treasurer of Kansas City, Missouri, certify that .....

.....Dollars and .....Cents

is the amount required this day to redeem the following described tract or parcel of real property in Kansas City, Missouri, to-wit: Parcel No. ..... in the Book of Sales of 1937 being .....

Lot 313 Blk 24 McGees add

THIS RECEIPT INCLUDES THE FOLLOWING:

Recording Fee		$ 2898 89
City Tax for the year 1937 and Interest		$
" " " " " ..... " "		$
" " " " " ..... " "		$
State and County Tax for the year ..... and Interest		$
" " " " " " " ..... " "		$
" " " " " " " ..... " "		$
Special Taxes for ..... and Interest		$
" " " ..... " "		$
Park Purchase Taxes		$
Repairs Dec		$
Total		$ 2898 89

Back 34-35-36

26190 0
6150

COUNTERSIGNED BY

Maurice Carey City Treas.

..... Commissioner of Accounts By WC ..... Deputy.

Prentice Pkg. Co.—24780

Exhibit 48-L

[fol. 49] On the same day, January 26, 1940, and at the same time by agreement of parties and by leave of Court, defendants refiled their answer to plaintiff's amended petition as their answer to plaintiff's amended petition as amended January 26, 1940, and said cause was assigned by the Court to Division No. 8.

Defendant's answer to said amended petition is as follows:

ANSWER TO AMENDED PETITION

Count I

Come now defendants and for answer to the amended petition of plaintiff filed herein, state:

(1) They admit the allegations of Paragraph 1 of said amended petition.

(2) They admit the allegations of Paragraph 2 of said amended petition.

(3) They admit that since its creation by the original act of the General Assembly of the State of Missouri that plaintiff has continually and actively engaged in the prosecution of the purposes of its incorporation, but deny so far as the subsequent allegations of this answer affect the same that the prosecution of such purposes were under its said charter. Defendants admit the remaining allegations of said paragraph except that they deny that the annual expenditure of [fol. 50] plaintiff is far in excess of any income derived, and deny that its total income from its schools is not in excess of $1,200,000.

(4) They deny the allegations of Paragraph 4 of said petition.

(5) They admit that the Constitution of the State of Missouri as alleged in Paragraph 5 of the petition went into effect on the date alleged and that it is the supreme law of the State of Missouri. They deny that as applied to this plaintiff said constitutional provisions are contrary to and in violation of section 10 of Article I of the Constitution of the United States, in that if applied to this plaintiff the same would impair the obligation of contracts.

They admit that Sections 9742-3, Revised Statutes of Missouri, 1929, are as set forth in said paragraph, but deny that

as applied to plaintiff and its property said sections are null and void as being contrary to and in violation of Section 10, Article I of the Constitution of the United States, in that the same impair the obligation of contracts.

(6) They admit the allegations of Paragraph 6 of said petition.

(7) They admit the allegations of Paragraph 7 of said petition except that they deny that the acts of defendants [fol. 51] are illegal and without any right or jurisdiction, and deny that the acts therein alleged and contemplated by defendants would be to plaintiff's great and irreparable damage.

(8) They deny the allegations of Paragraph 8 of said petition.

(9) They admit the allegations of Paragraph 9 of said petition.

(10) They admit the allegations of Paragraph 10 of said petition except that they deny that the holding of the Supreme Court of Missouri and the effect of the judgment in *University* v. *Bauman*, 108 S. W. (2d) 403, was as set forth in said paragraph.

(11) They deny the allegations of Paragraph 11 of said petition.

(12) Further answering, they deny each and every allegation contained in plaintiff's petition and not heretofore specifically admitted herein.

(13) Further answering, defendants state that each and every parcel of real estate described in said count of plaintiff's petition is and was on May 1, 1933, under the Constitution and Laws of the State of Missouri, and under the Charter and Ordinances of Kansas City, subject to taxation and is not and was not on said date entitled to exemption from any taxes.

[fol. 52] (14) For further answer, defendants state that the property described in said first count of plaintiff's petition was, at the time said property was acquired by said plaintiff, on May 1, 1933, subject to encumbrances and mortgages to secure large indebtednesses, the exact amount of

said indebtednesses as of May 1, 1933, is unknown to said defendants; that said debts and mortgages were held by private individuals, the names of whom are unknown to the defendants, and that the said holders thereof are not entitled to have their securities enhanced by tax exemptions with relation to the property encumbered.

(15) For further answer, defendants state that the provisions of the Act of the General Assembly of the State of Missouri, entitled, "An Act to Incorporate the Eliot Seminary," approved February 22, 1853, as set forth in Paragraph 1 of the said Count, and the provisions of the Act of the General Assembly of Missouri, entitled, "An Act to Amend an Act entitled 'An Act to Incorporate the Eliot Seminary,' approved February 12, 1857," as set forth in Paragraph 3 of said Count, did not declare its intention to bind the state or Kansas City never to impose any taxes upon plaintiff, for the reason that no obligations or duties were imposed upon plaintiff, and that there was no consideration for the passage of said Acts, either actual or [fol. 53] expressed, within the terms of said Acts, sufficient to justify a perpetual exemption from taxation; that said Acts contain no provision limiting in any manner the future acquisition of property by plaintiff or any effect upon plaintiff in the acquisition and use of property; that said acts totally ignore any future rights of the state of Missouri, and fail to provide for any advantage to the state and the inhabitants thereof, and that it was therefore not contemplated by the Legisla-ure or by plaintiff at the time said Acts were passed, that the same should be a perpetual exemption or obligatory as a contract upon the state and its inhabitants for all time to come. That said Acts relied upon as contracts by plaintiff granted special advantages to plaintiff to the detriment of the public and should be in law and equity construed strictly against the right claimed by plaintiff. That it was beyond the power of the Legislatures at the time said Acts were passed to sell, give or to contract, or bargain away forever, the taxing power of the state, and that therefore the exemptions claimed by plaintiff do not exist and that to so hold would in no way contravene or be in violation of Section 10, Article I, of the Constitution of the United States, which provides, among other things, that no state shall pass any law impairing in any way the obligations of contracts.

[fol. 54] (16) For further answer, defendants state that it was provided by Chapter 34, Article I, Section 7, of the Revised Statutes of Missouri, 1845, as the same were revised and digested by the Thirteenth General Assembly during the Session of 1844 and 1845, said Act being approved March 19, 1845, as follows:

"The Charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, suspension and repeal in the discretion of the Legislature."

That said law was a general law setting forth the settled policy of the state of Missouri and was in full force and effect in the state of Missouri at the time said Act entitled, "An Act to Incorporate the Eliot Seminary," approved February 22, 1853, was passed; that said Section of said Chapter was carried into and became a part of the Revised Statutes of Missouri of 1855, the same being Chapter 34, Article I, Section 7, and was in full force and effect at the time said Act of the General Assembly of Missouri entitled, "An Act to Amend an Act entitled 'An Act to Incorporate the Eliot Seminary,' approved February 12, 1857," was passed, and that the terms of said Act referring to Eliot Seminary must be construed in conjunction with the previous general law of the state of Missouri affecting said Eliot Seminary and that said Acts affecting said Eliot Seminary, now the Washington University, did not con-[fol. 55] stitute a contract exempting all property thereof from taxation forever, and for the reasons hereinbefore alleged, and the taxation of plaintiff's property by defendants, for such reason in no way is contrary to or in violation of Section 10 of Article I of the Constitution of the United States, in that the same would constitute the passage of a law impairing the obligation of contracts, and these defendants state that to construe said Acts as exempting plaintiff from taxation by Kansas City in view of the terms of said Acts of the General Assembly hereinbefore set out affecting Eliot Seminary and said general law of the state in full force and effect at said time, providing that the charter of any corporation thereafter granted by the Legislature should be subject to alteration, suspension and repeal in the discretion of the Legislature, would constitute the making and enforcement of a law by the state of Missouri which would abridge the privileges and immunities of citizens of

the United States and would be the making and enforcing of a law depriving defendants and Kansas City and the inhabitants of the state of Missouri of property without due process of law, and would constitute the making and enforcement of a law denying to defendants and Kansas City and the inhabitants of the state of Missouri the equal protection of the laws, in violation of the Fourteenth Amend-
[fol. 56] ment of the Constitution of the United States, in the following respects:

In that said Acts affecting Eliot Seminary discriminate against residents of the state of Missouri and in favor of plaintiff and discriminate against nonresidents of the state of Missouri and in favor of plaintiff in regard to the rate of taxation; in that such exemption would increase the burden of taxation on property within the state of Missouri not owned by plaintiff; in that the same relieves tracts of lands owned by plaintiff of the burden imposed by law on other tracts of land owned by citizens of the United States and of the state of Missouri; in that the same constitutes an exercise of the taxing power for a nonpublic purpose in that said Washington University is a private institution and is not under the control of the state or any subdivision thereof.

(17) For further answer, defendants state that it was provided by the Constitution of the State of Missouri of 1820 in Article XIII, Section 19 thereof, "that all property subject to taxation in this state, shall be taxed in proportion to its value." That said constitutional provision constituted a definite prohibition upon subsequent Legislatures in the State of Missouri from passing any Act or Acts exempting the property of plaintiff from taxation, and that said Acts affecting Eliot Seminary aforesaid, now Wash-
[fol. 57] ington University, were void and of no effect and in violation of said constitutional provisions of the Constitution of Missouri of 1820, in that said constitutional provision gave no power to the Legislature to grant such tax exemptions as is claimed by plaintiff and in that said Acts selected plaintiff's property arbitrarily from a class upon which the burden of taxation was imposed by said Constitution, and in that the passage of said Acts attempts to use and put into effect the Legislative power of the state in such a way as to introduce a system of taxation entirely different from that contemplated by said Constitution, and constituted a bartering or giving away of the state's right to

tax property without any consideration and by improper discrimination upon other property owners and other property.

(18) For further answer, defendants state that it was provided by the Constitution of the State of Missouri of 1820 by Article XIII, Section 2 thereof, "that the people of this state have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness."

That said constitutional provision must be construed, if the aforesaid Acts of said Legislatures affecting Eliot [fol. 58] Seminary, now Washington University, be construed to be a contract between the State of Missouri and said Washington University, as an express condition to such contract, that the same was revocable by the will of the people if and when a new Constitution should be adopted which would prevent any such tax exemptions as claimed by plaintiff; that subsequent to the enactment of said Act affecting Eliot Seminary now Washington University, the people of the State of Missouri on July 4, 1865, did adopt and put into effect a new Constitution of the State of Missouri, which provided in Article IV, Section 25 thereof, that the General Assembly shall not pass special laws exempting any property of any named person or corporation from taxation thereby and at said time cancelling any contract between the state and Washington University and declaring at an end any tax exemption theretofore granted to said university upon the abolishment of the Constitution of the State of Missouri of 1820.

(19) For further answer, defendants state that if said Acts affecting Eliot Seminary, now Washington University, should be construed to be valid and binding at the time the same were enacted and accepted by plaintiff, that the same by their express terms only contemplated exemption from taxation of taxes levied by the state at the time said Acts were passed and contemplated only an exemp- [fol. 59] tion from such state taxes; that the tax sought to be levied, assessed and collected by defendants is a tax provided for by the Charter of Kansas City, Missouri, and is a municipal tax on plaintiff's property duly assessed and levied pursuant to a grant of taxing power to Kansas

City by the Constitution and statutes of the state of Missouri.

Defendants further state, that the Constitution of 1820 under which plaintiff claims the Legislatures in passing the aforesaid Acts affecting Washington University, had power to exempt it from taxation, contained no provision in regard to incorporating cities, towns and villages, or for the levying and collecting of any city taxes; that Kansas City as a municipal corporation was without municipal government until February 4, 1850, when the territory embraced within certain plats theretofore filed with the County Court of Jackson County, Missouri, was incorporated by said County Court at Independence under the name and style of the "Town of Kansas"; that the City of Kansas was not incorporated until February 22, 1853, when it was incorporated by a special Act of the Legislature of the State of Missouri; that plaintiff had no property within the limits of Kansas City until long after its incorporation; that all of the taxes which Kansas City could or [fol. 60] might have levied against property originated long after the passage of said Acts affecting Washington University and have originated since said Acts and were not in contemplation of either the Legislature or of plaintiff at the time of the passage of said Legislative Acts affecting Washington University and are therefore not within the terms of said exemption or said contract between the State of Missouri and Washington University, if the same be construed to be a contract.

(20) For further defense, defendants state that if said Acts of said Legislatures affecting Washington University be determined a contract that the same must be construed to be a contract coupled with the condition that only such property should be exempted as might be acquired by plaintiff for its legitimate needs and for the needs of an institution such as was contemplated by the Legislature at the time said Acts were passed, and that it was not contemplated by the State of Missouri and plaintiff at the time of the passage of such Acts that plaintiff might acquire any property beyond its legitimate wants or property such as the property sought to be assessed by defendants in this proceeding, which constitutes property which is merely convenient for increasing the advantages and profits of plaintiff and is held as a mere convenience or in-

cident to the business of plaintiff; that plaintiff for several [fol. 61] years after the passage of said Acts only had four pieces of income real estate not occupied and directly used for school purposes; that at the present time plaintiff owns in the City of St. Louis alone over sixty-two parcels of real estate, all except one of which are income property only; that it owns extensive real estate holdings in St. Louis County outside of the city which have not been taxed; that it owns several tracts of land in Kansas City which are income producing property and other property of large amounts to these defendants unknown in the State of Missouri which are not used for school purposes but which are income producing properties; that since its organization plaintiff has, in addition thereto, received gifts aggregating in excess of $26,000,000; that it receives each year a sum in excess of $1,345,000 from private investments, a sum largely in excess of the amount of the tuitions and fees received by it from students enrolled in said school; that unless a limit is placed upon plaintiff in the acquisition of property not used for school purposes, that there will be no limit to its right of acquisition of property and that it may in the future acquire property beyond its legitimate wants and has at this time acquired this property and other property unknown to defendants in excess of its legitimate wants; that such rights and privileges were never contemplated between plaintiff and the State of Missouri and [fol. 62] that the same situation between the State of Missouri and plaintiff has been changed and altered by the acquisition of such large amounts of property; that unless this Court determine that said property is taxable by defendants that plaintiff will be permitted in the future to acquire large amounts of property, and that plaintiff has been permitted in the past to acquire large amounts of income property exempt from taxation and for the purpose of using the same has been permitted to and will in the future increase the size of its institution so that said added income will be used for operating expenses and thus by constant enlargement perpetuate a wrong upon the State of Missouri and the inhabitants thereof and that therefore said contract must be construed not to include any such privileges or rights in plaintiff for all the reasons heretofore set forth.

(21) For further answer, defendants state that it was not within the power of the Legislatures in enacting said

Acts applying to Eliot Seminary, now Washington University, to relieve plaintiff from the 6th, 7th and 8th Sections of the First Article of the Act concerning corporations, approved March 19, 1845, which general statute sets forth the settled policy of the state within the terms of the Constitution thereof; that to enforce the same, or give any effect to the same, would be in violation of Section 19 of Article XIII, of the Constitution of the State of Missouri [fol. 63] of 1820, providing that all property subject to taxation shall be taxed in proportion to its value, and in violation of Article XIII, Section 2, of the Constitution of the State of Missouri of 1820, providing "that the people of this state have the inherent, sole and exclusive right of regulating the internal government and police thereof, and of altering and abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness," and in violation of the Fourteenth Amendment of the Constitution of the United States for all the reasons set forth in Paragraph 16 of this answer.

(22) For further answer, defendants state that if any force and effect at this date be given said Acts of the General Assembly affecting Eliot Seminary, now Washington University, or if the same be construed to constitute a contract between the State of Missouri and plaintiff, or if the same be construed to constitute a contract between Kansas City and defendants and plaintiff, or if the same be construed to prevent Kansas City from levying municipal taxes upon property owned by plaintiff within the limits of Kansas City, that the same would be in violation of the Fourteenth Amendment of the Constitution of the United States, in that the same would constitute the making and enforcement of a law by the State of Missouri which would abridge the privileges and immunities of the citizens of the United States, [fol. 64] and would be the making and enforcing of a law depriving defendants and Kansas City and the inhabitants of the State of Missouri of property without due process of law, and would constitute the making and enforcement of a law denying to defendants and Kansas City and the inhabitants of the State of Missouri the equal protection of the laws, for all the reasons set forth in Paragraphs 14, 15, 17, 18, 19, 20 and 21 of this answer.

Wherefore, defendants pray that the petition herein be dismissed and for their costs.

Count II

For answer to the Second Count of plaintiff's petition, defendants repeat and incorporate by reference with the same force and effect as if actually repeated herein the allegations and averments set forth in all paragraphs or sections of the answer to Count I of plaintiff's petition.

Wherefore, defendants pray that said count may be dismissed and that it may have its costs herein expended.

Count III

For answer to the Third Count of plaintiff's petition, defendants repeat and incorporate by reference with the same force and effect as if actually repeated herein the allegations and averments set forth in all paragraphs or sections of the answer to Count I of plaintiff's petition.

[fol. 65] Wherefore, defendants pray that said count may be dismissed and that it may have its costs herein expended.

Count IV

For answer to the Fourth Count of plaintiff's petition, defendants repeat and incorporate by reference with the same force and effect as if actually repeated herein the allegations and averments set forth in all paragraphs or sections of the answer to Count I of plaintiff's petition.

Wherefore, defendants pray that said count may be dismissed and that it may have its costs herein expended.

Count V

For answer to the Fifth Count of plaintiff's petition, defendants repeat and incorporate by reference with the same force and effect as if actually repeated herein the allegations and averments set forth in all paragraphs or sections of the answer to Count I of plaintiff's petition.

Wherefore, defendants pray that said count may be dismissed and that it may have its costs herein expended.

George Kingsley, City Counselor; Marcy K. Brown, Jr., Assistant City Counselor, Attorneys for Defendants.

[fol. 66] RECITAL AS TO TRIAL, ETC.

Thereafter and on the 26th day of January, 1940, this cause came on regularly for hearing and the parties appearing by their respective attorneys, the cause was submitted to the Court upon pleadings and evidence adduced and was by the Court taken under advisement, and on the 24th day of February, 1940, the Court rendered judgment, which said judgment is fully set out in the Bill of Exceptions filed and allowed and made a part of the record herein.

[fol. 67] IN CIRCUIT COURT OF JACKSON COUNTY

Bill of Exceptions on Behalf of Defendants

Be It Remembered, That on the 26th day of January, 1940, the same being the 17th day of the regular January, 1940 term of said Circuit Court, this cause coming on to be heard before the Honorable Paul A. Buzard, Judge of said Court, without a jury, the plaintiff appearing by its attorneys, Messrs. McCune, Caldwell & Downing and specially by Mr. Harold N. Noble, the defendants appearing by their attorneys, Mr. Roy B. Cunningham and Mr. Elmo B. Hunter, the following proceedings were had and entered of record on said day and the days hereinafter mentioned, to-wit:

Thereupon the plaintiff, to sustain the issues on its part, offered and introduced evidence, oral and documentary, as follows, to-wit:

Mr. Noble: Before we get started, plaintiff asks leave to amend the petition by substituting H. J. Gorman for Maurice Carey, as City Treasurer, and the City enters the appearance of H. J. Gorman and files Answer for him.

It is agreed that *that* all net revenue derived from the three properties in Kansas City and described in the petition enter the general expense fund of The University and are devoted to educational purposes of the school.

Mr. Cunningham: Wait a minute. Well, that is a fact, isn't it?

[fol. 68] Mr. Noble: Yes. It is agreed that the City Treasurer, unless enjoined, would have proceeded and will pro-

ceed to enforce payments of the general taxes against and out of the respective properties of the plaintiff.

It is agreed that the transcript of the testimony in evidence in the suit of Washington University against Koeln, being the transcript involved in the case reported as Washington University versus Baumann, as Substitute Collector——

Mr. Cunningham: Mark it as an exhibit right now and put it in.

(The document last above referred to by Mr. Noble was thereupon identified by the reporter as Exhibit No. 1, was received in evidence, and is in words and figures following, to-wit):

EXHIBIT 1

Direct examination.

By Mr. Williams:

My name is Joseph H. Zumbalen. I live in University City, Missouri. I am secretary and treasurer of Washington University, the plaintiff, and have been such since February 1, 1925. I have in my custody and possession all of the records of the University. I have lived in St. Louis all of my life. I have all the records of the University from the beginning, the original record books and minutes of the Board of Directors from the very commencement. I have examined these record books and have made a copy of the proceedings shown therein, with respect to the action taken by the incorporators with reference to organization under [fol. 69] the acts which have been offered in the evidence.

The first record book begins with the meeting of February 23, 1854, which was just one year after the Governor approved the Act incorporating Eliot Seminary, and it shows that ten of the incorporators named in the original Act of February 22, 1853, met, in pursuance of written notice served on all of them, at Wayman Crowe's residence, and agreed to organize under the Act. That Samuel Treat and William G. Eliot, two of the incorporators, submitted a so-called constitution, which, after consideration, was adopted. The first article of said constitution is as follows: "This corporation is organized for the purpose of founding an educational institution under the Act to incorporate Eliot

Seminary, approved February 22, 1853, which institution shall be known and designed as —." I may say that there was, from the start, the question as to whether they wanted to use the name of Eliot Seminary, so they left that blank. "The object of the institution shall be to provide means of a thorough and complete education, with particular view to practical usefulness." A president, vice president, treasurer and secretary were also elected at that meeting. The records further show that, at a meeting of the corporation held on January 12, 1857, the following resolution was adopted: That the subject of the change of name of Eliot University to Washington University and also the incorporation of Article VIII of the constitution, which had been adopted in 1854, into the Charter, and also vacating [fol. 70] the alley and prohibiting the opening of any street or streets, be referred to a committee consisting of Messrs. Gantt, Treat, and the president. At a meeting held March 24, 1857, the committee appointed on January 12, 1857, reported that pursuant to the views of the Board, a bill to amend the charter of Eliot Seminary was prepared and submitted to and passed by the General Assembly, and received the Governor's approval. Said amended charter is as follows, and then it is set out in full, and is in the printed copy I furnished to Your Honor. Whereupon, the following resolution was adopted: Resolved, that said amendment to the charter of this corporation, be accepted.

Q. Have you a certified copy of those minutes?

The Court: Let me interrupt you just a moment. What is the contest here? I suppose there is an answer? What is it?

Mr. Burkhardt: Yes.

The Court: The answer contends, I suppose, that on the facts, whatever they may be, that Washington University is not exempt from taxation?

Mr. Burkhardt: Yes, that is one of the allegations. Another allegation in the answer is the fact that plaintiff did not pursue its remedy at law, by appealing from this assessment to the local Board of Equalization, and thence to the State Tax Commission, and they are not entitled to consideration at the hands of a Court of Equity, because they had an adequate remedy at law. Further, the contention is made that there are certain mortgages, or a certain

[fol. 71] mortgage, upon some of the income producing property, held by individuals, and by reason of the exemption or claimed exemption, that mortgage is enhanced and benefit is given to a third party, not a party to this litigation here.

The Court: What taxes are involved; real estate or personal?

Mr. Burkhardt: Real estate taxes on about eighty or ninety pieces of property.

The Witness: Real estate taxes only upon what we call productive investments; none on the University or educational buildings, or campus property.

The Court: Is the University campus and other property, is that exempt? Or, does the City try to collect taxes on it also?

Mr. Williams: Most of the campus is outside of the City in the County, but there has been no attempt to levy taxes on that property.

Mr. Burkhardt: There has been no attempt to levy an assessment against the Medical School or the property in the City.

The Court: Then, these taxes that are involved in this suit, are taxes on property that the University owns, which Mr. Zumbalen says is producing revenue.

The Witness: Yes, or may produce revenue. Some of it is unproductive at present, but it is in that class. Here is a certified copy of the minutes.

Mr. Williams:

Q. You have made this copy from the original record of which you spoke?

A. From the minute book.

[fol. 72] Mr. Williams: I ask to have the copy marked as "Plaintiff's Exhibit 1." I offer them.

Q. What do you know of the organization of the University and of its conduct as an educational institution, from and after these Acts constituting its Charter that you have spoken of?

A. Well, after the organization of the incorporators, and acceptance of the Charter, they proceeded to immediately engage in educational work. First of all, they started a so-called Trade School, and then an Academic Department,

and the immediate result of that was that they acquired property on 17th and Washington avenue, on the southwest corner, and the original buildings were erected there. They solicited subscriptions from among their friends, and the incorporators themselves contributed liberally to a fund to purchase a site and for a building fund, and in addition to the Academic Department, one of the first undertakings was to establish a female seminary that was organized and in operation before 1860, I think, and has been known ever since as Mary Institute. From time to time other departments were added to the University until—its growth during early years, of course, was not rapid, but now there are some—oh, I have forgotten to bring the bulletin—but I think seventeen or eighteen different departments.

Q. About when was this educational work that you speak of begun, according to the records of the University?

A. It was begun in the late 50's. It really commenced about 1858. I do not think that the first class graduated as early as 1857, because that would have meant that the [fol. 73] academic department started as early as 1854, which I do not think it did, but the academic department was certainly organized and in operation before 1857. If this is material, I can get those dates, of course.

The Court: It is only material as pertaining to the history of the University, that is about all.

Mr. Zumbalen: The university has operated, according to my examination of the records, every year since then as an educational institution.

Q. When was the University moved from its original site at 17th and Washington avenue to its present quarters?

A. Well, it was not actually moved until after the close of the Louisiana Purchase Exposition, that is, 1905. The original group of buildings was erected before that time. We started building in 1900, I think, and then there were four or six buildings completed, which were leased to the Louisiana Purchase Exposition Company for the period of the exposition. After the close of the exposition, which was closed in December of 1904, the University moved out to the present location.

Q. Where is the present location?

A. On the west side of Skinker Road, extending from the railroad tracks on the north to Forsythe on the south, and then south of Forsythe there is an additional—that tract

covers about one hundred and fifty acres, and there is an additional tract of about forty acres between Forsythe and Wydown, fronting on Pennsylvania avenue, which is now known as Big Bend road.

Q. How is this——?

A. Pardon me. In addition to that, there is the medical [fol. 74] group, located on Kingshighway and Scott avenue —Scott and Euclid avenues. The medical school is located there, 4580 Scott avenue. The dental school at 4557 Scott avenue, and the medical clinic on the west side of Euclid, just south of the Wabash Railroad tracks, and the Oscar Johnson Institute on the northwest corner of Euclid and Kingshighway, running east and west.

Q. This Institute, is that a part, or associated with the Medical Department?

A. The Oscar Johnson Institute, yes. The Oscar Johnson Institute and the McMillan Hospital are parts of the University.

Q. That Institute is for the treatment of all diseases of the eye?

A. Yes, eye, ear, nose and throat.

Q. Now, this present campus building, or quarters of the University, is that improved?

A. Yes, sir.

Q. To what extent, and, generally, how?

A. There are quite a number of buildings there. The easternmost buildings are two fronting on Forsythe, and immediately west of Skinker road, the one next to Skinker road being the School of Fine Arts, and west of that is the Givens Hall of Architecture. Those two buildings, at least, the School of Fine Arts and part of the Givens Building, are in the city. That is, the limits line runs through that building. Everything west of that is in the County, not in any municipality. Taking the buildings west of that, there is Brookings Hall, the first to the east. North of that is Cupples No. 1, and south of Brookings Hall is Cupples No. 2—no, south of Brookings Hall is Bush Hall. Cupples No. 1 [fol. 75] is engineering, and Bush Hall is chemistry; and west of Brookings, and running parallel to it, these buildings, Bush Hall and Cupples No. 1, are on an east and west axis, and Brookings and the library buildings are on a north and south axis. Then, to the north of Ridley Library is the Duncker Hall of Commerce & Finance; to the south of that is the Grace Valle January School of Law building,

and immediately southwest of the January Hall is the Newton K. Wilson Hall, which is devoted to or is the house of the Department of Geology; and immediately west of that is the Charles Rebstock Hall, occupied by the Department of Biology. Then, west of Rebstock Hall are two men's dormitories, Lee Hall and Liggett Hall. To the north of Lee Hall is the Graham Chapel, and on the north side of the campus, west of Cupples No. 1, is Cupples No. 2, also devoted to engineering. The power house is north of that and immediately adjacent to the railroad tracks. Then, a little farther west, on the north side, is the women's building, and west of that is McMillan Hall, the dormitory for women. Then comes, on that side of the campus, a group of eight Fraternity Houses.

Q. These buildings that you speak of, they are maintained and kept up by the University, are they?

A. All of them, excepting the Fraternity Houses. We have nothing to do with those, excepting that we furnish a building site for them, and lend them money.

Q. Has the University built up any libraries and equipment?

A. A vast amount of equipment and large libraries. Our [fol. 76] central library is in Ridley Hall, the building which parallels Brookings Hall, on the west side of the original quadrangle, and it is considered a very valuable library, for a college library. Then, in addition to that, the departments have libraries of their own. The Law School Library, I suppose, now comprises over forty thousand volumes. The Medical School has a large library, and the Dental School has a considerable library, the Chemistry Department, Biology Department. Art School and Architecture, all have libraries of their own, devoted particularly to the subjects which they teach, located in those buildings.

Q. Now, does the University, and has the University, for a good many years, employed professors and instructors?

A. Yes, from the very beginning. I think the present number is, oh, considerably over five hundred—nearer six hundred.

The Court: In all of the schools?

A. Yes, sir.

Q. And those professors and instructors, of course, have to be paid?

A. They are all paid by the University.

Q. And, about how many students has the University at present, Mr. Zumbalen?

A. Well——

Q. —to whom it is furnishing instruction, in one way or another?

A. I can give you the figures on that, and show the comparative growth, if you wish. I cannot give you the figures for the present year, because they are not complete. I have the figures for different periods between 1910 and the present time. 1910-1911, we had 1802 students; 1915-1916, [fol. 77] 2196 students; 1921-1924, 4471 students; 1925-1926, 6195 students; 1930-1931, 7915 students; 1932-1933, 7313 students. There was a drop in the last few years. This year we will show a further drop. I have looked into the last figure I gave a little more closely, and the figure for 1932-1933, the total was 7313, of whom 3012 came from the City of St. Louis, and 1824 from the rest of the State of Missouri. Of course, we have quite a number of students from different parts of the country, but that is a fair illustration of the distribution.

Q. Now, what professional schools does the University maintain, along with the regular Academic School?

A. The School of Medicine, School of Law, School of Dentistry, and School of Fine Arts.

Q. You have a School of Commerce & Finance?

A. School of Finance & Commerce.

Q. You have engineering schools?

A. Well, that is a Department, although we do call that a school now, too. The Engineering School and School of Architecture.

Q. Electrical engineering?

A. That is divided into the electrical engineering, civil engineering and mechanical engineering.

Q. Now, the University has, has it not, a large amount of practical and scientific equipment and apparatus?

A. A very large amount, yes.

Q. That is being maintained, and is being added to all the time?

A. Yes, and replaced all the time. Equipment wears out, and has to be replaced ever so often.

[fol. 78] Q. The University also maintains, in addition to these schools you have mentioned, extension courses?

A. Yes, sir.

Q. What do you mean by that?

A. Well, the extension division has what is called Saturday morning work and night work during the week.

Q. What is the purpose of that work?

A. The purpose is to enable young people who cannot go to the University proper or to college, to get some of the work that is done in the college. Now, the extension division was reorganized about two years ago, so as to permit the work done in the extension division—to give credit; rather, for the work done in the extension division, so if the students who take that work are afterwards able to enter college, they can get credit for the work in the extension division.

Q. And if they do not want to enter college, they are enabled to take advantage of their acquaintanceship with these subjects they have studied for practical purposes; is that true?

A. It is, indeed, true. The fact of the matter is, with respect to the extension division, that a great many employers urge their employees to take the work there, and even help them to take it.

Q. Mr. Zumbalen, what is the annual expenses to the University of operating all these activities that you have described, in the conduct of these schools?

A. The expenses for the year 1932-1933, that is, the year ending June 30, 1933—I'll give you the figures—the expenses of the schools during that year were $2,138,121.45.

Q. Now——

A. Do you want it for the year before also?

[fol. 79] Q. Yes, because that is the year I referred to in this petition?

A. For the year ending June 30, 1932, it was $2,363,573.55.

The Court: In that connection, if you have it there, what were the total receipts for that year?

Mr. Williams: Could he divide that into two parts?

The Court: Yes.

Mr. Williams: Receipts from tuition and receipts from income?

The Court: All right, if he has it that way.

The Witness: The income from investments was $1,345,449.94; the income from schools—that means, of course, tuition and fees—was $1,137,294.38.

The Court: What year is that?

A. The year ending June 30, 1932. Now, for this year, or last year, ending June 30, 1933, the income from investments was $1,146,636.74, and from schools, was $1,102,126.22.

Q. Now, this money that you got from various sources, what did you do with it?

A. It is all applied and spent in running the schools; every dollar of it. Sometimes the operations for the year show a deficit; sometimes, they show a surplus. In any event, the deficit or surplus is very small, and never exceeds $2,000 or $3,000. If it is a surplus, it is carried forward to the income of the succeeding year; if it is a deficit, it is made up out of the income of the succeeding year. We are enabled to run pretty close in that way, because we run on a budget, which is changed from time to time, during the [fol. 80] year, as exigencies require. If it appears during the year that our budget will not work out, that we will run short, we will curtail wherever we can during the balance of the year, to live within our budget. The surplus that is shown at the end of the year by our balance sheet, the profit, is never carried into a surplus account.

Q. According to your examination of the records and books of the University, has that always been true?

A. Yes, that has always been true, excepting that, in the earlier days, there was practically always a deficit. That was usually made up by members of the corporation. I know that for the first fifteen or more years of the Law School's existence, which started in 1867, there was a yearly deficit running from $3,000 to $5,000, which Mr. and Mrs. Henry Hitchcock made up yearly. One or the other made it up yearly for fifteen or more years. The same was true of the balance of the University, until about 1898, when Mr. Brookings, who was then president, insisted there must be no more deficits. He made up the deficit for the prior year personally, and it amounted to some $10,000 or $12,000, as I recall. I cannot be positive about these figures. He then put into operation the present budget system, which has prevented deficits of any large amounts.

Q. Roughly speaking, can you state to the Court about how much the entire expense per student compares with what the student pays in?

A. Taking the students in all departments, and averaging them, the University spends nearly twice what the student [fol. 81] pays in. In other words, in most of the depart-

ments, the tuition is $250 per year. It costs the University very nearly $500 per year to carry every student. In some departments, in the Art School, the tuition is very much less. In the Medical School, it is very much more. It is $400 per year, but the actual cost to the University, per student, is over $1,900 per year.

Q. For every medical student you train, you spend $4.50 to his $1.00?

A. Yes, sir.

Q. Now, Mr. Zumbalen, does the University have any scholarships? Has it maintained scholarships?

A. Yes, it has from the start maintained some, and the number is increasing all the time.

Q. Can you state to the Court the situation with reference to scholarships at present, and give the Court some idea of the number of scholarships maintained by the University for deserving and worthy students, and about what they cost?

A. Yes, I can. In the year 1932-1933, that is, the year ending June 30th of last year, we distributed to students scholarship fellowship funds amounting to $40,066. That is, income for endowments given for that purpose, in addition to a large number of free scholarships. We also have a number of loan funds, out of which we make loans to worthy and deserving students, and last year these loans, the income so used from loan funds, was just short of $18,000. Now, I'll give you also the amount of free scholarships. Free scholarships last year amounted to $50,225. That is, scholarships for which the University gets not a cent from anybody. All that was given to worthy and deserving [fol. 82] students who show unusual qualifications for the work.

The Court: Are these scholarships paid out of the funds of the University, or are they paid out of donations from endowments?

A. No. The figure $40,000 represents scholarships for which we have endowments, that is, the income from the endowment fund. This $50,000 that we awarded last year, we have no endowments for that, and it comes out of the University's income.

Q. How do you select these students that get these free scholarships?

A. They are selected by the Chancellor, co-operating with the deans of the departments in which they want to register, and they are based upon the intellectual qualifications of the student and his financial needs and general character.

Q. So that those are open to anybody that can measure up to his deserts in that regard?

A. Yes, excepting that there is another limitation upon the division, in this respect: We give a certain number to each of the high schools in the City of St. Louis, and we give a certain number to each of the Kansas City high schools, and to various other high schools throughout the State. That is another limitation.

Q. You do that as a means of general selection?

A. Yes, sir.

Q. Leaving it to those local schools of good standing to weed out promising candidates for education?

A. Exactly.

Q. Mr. Zumbalen, how has the University gotten this money?

A. Altogether by gifts from friends and public-spirited [fol. 83] citizens who realize the value of education; but, I might say, the original start, the beginning, was entirely due to the gifts made by the original incorporators. For some considerable period of time, there were no gifts received from outside sources.

Q. If I understand you then, the original incorporators were the ones who started the school and kept it going for a while by their own gifts?

A. Yes, sir.

Q. As the school has grown and increased in size and reputation, your list of donors has enlarged?

A. Very much so, indeed. I have prepared a list from the records, and taken off all donations in excess of $25,000 that the University has ever received. I would not be sure that this includes everything, because——

Q. I do not think we care to go especially into that, unless you desire to do so. I am concerned, principally, with this property in question in this case.

A. Well, I would be glad to submit this list of donations.

Q. I should like to ask you particularly about one or two matters in that connection. A very large portion of your estate, the Medical School and its endowments, where does that come from?

A. From the General Education Board.

Q. What is that?

A. That is an eastern foundation which has been helping, devoting itself principally to the advancement of medical education.

Q. Who was it founded by?

A. Do you know—was it the Rockefeller foundation?

Q. They have made very large donations to the Medical School, haven't they?

[fol. 84] A. Yes, we have received from the General Education Board, $7,519,765.

The Court: All together?

A. Yes.

Q. Do you know whether any representation was made to them as to the exempt character of the property of the University?

Mr. Burkhardt: I object to that as immaterial and irrelevant, any representation that may have been made to a third party.

The Court: I'll hear it.

To which ruling of the Court the defendant then and there duly excepted.

A. Why, I can't answer that, Mr. Williams. I never, personally, dealt with any representative of the General Education Board. I would like to state, that while the General Education Board's contribution is quite large, there are others that are rather surprising, among them, that of Mr. Robert S. Brookings, who became president along about 1892 or 1893, whose total contribution amounted to $3,690,000.

Q. Mr. Brookings was one of the great benefactors of the University, both in a money way and executive way?

A. Indeed he was. He really started the University on its great career.

Q. Mr. Brookings and Mr. Nagel and Mr. Eliot are responsible for the modern institution known as Washington University, aren't they?

A. They are, for the modern institution. At the same time, I feel we cannot forget the old times, when the struggle was hardest of all.

Q. All right. You may indicate some others?

A. Mr. Samuel Cupples, $1,925,000; Mrs. Eliza McMillan, $1,315,000; Charles Rebstock, $1,008,000; Joseph B. Givens, [fol. 85] $765,000; W. K. Bixby, $603,000; Edward Mallinckrodt, $974,000; Mrs. Sarah Glasgow Wilson, $991,000.

Q. Does the University pay to its trustees or officers, apart from its officers who direct the management and instruction, any salary or compensation?

A. The directors or members of the corporation do not get any salary or remuneration whatsoever.

Q. Mr. Zumbalen, we have here quite a list of pieces of property. I have here, may it please the Court, the original tax bills concerned here, which were made out and delivered to the Collector, the defendant in this case, for collection. I take it that they may be shown as offered in evidence, but I do not want to leave the tax bills here. They are in public custody and have to be held there, and I will replace them with correct copies.

Mr. Burkhardt: I believe the copy attached to the petition is a correct copy. There has been one bill that has been divided since.

Mr. Williams: Well, I think that we can do that. We will call Your Honor's attention to the fact that attached, as exhibits to the petition, are copies of these tax bills, which are correct.

Mr. Burkhardt: Yes.

Mr. Williams: And which are the tax bills here in question, and while I am offering the tax bills, it is understood that I will actually offer in place of the originals, these that are annexed as exhibits to my petition in this case.

The Court: That is all right.

Mr. Burkhardt: There may be one correction. One bill has been split into two bills.

[fol. 86] The Court: What is the aggregate amount of them?

Mr. Burkhardt: About $175,000. That does not include interest and penalties.

The Court: Are they all for the year 1931?

Mr. Burkhardt: 1932. They were assessed as of June 1, 1931.

The Court: Does Mr. Zumbalen know the character of property?

Mr. Williams: I am going to ask him about it right now. May it please the Court, I offer in evidence the exhibits attached to the petition, which are agreed, with the exception of Exhibit "E", to be correct copies of the tax bills issued and outstanding. Exhibit "E" has been split, for purposes of convenience of the administration—possibly on request of someone interested in the property, into three separate tax bills. Those three bills I'll offer in evidence, and will add copies to the record later.

Mr. Burkhardt: That is all right.

Said exhibits offered in evidence.

Q. Now, Mr. Zumbalen, I'll call your attention to the tax bills or to the property that is listed in these tax bills.

A. Do you want me to go through them all, item by item?

Q. I am afraid so. Can you just indicate—I don't think we need to go into that.

The Court: I would like to know whether the property is industrial property or manufacturing property or residence property, or what not.

Mr. Burkhardt: You can probably tell better from the petition than from the tax bills.

[fol. 87] The Witness: I would think so.

Q. I want to ask you whether the property we are talking about in these tax bills, was all property that was owned by Washington University of record on the first of June, 1931?

A. Yes.

Q. Will you go ahead and bring out what the Court has in mind; the character of the property?

Mr. Burkhardt: That will include all property so acquired, and the character of its use at the present time. I would like to have the dates, if you have them.

The Witness: I can give that, yes. Item No. 1 is a parcel on Second street, Block 27. That was acquired by deed of gift from Henry Shaw, as an endowment for the School of Botany, July 23, 1885.

Q. What kind of property is it?

A. That is business property. It is now vacant. It was occupied for years by the Illinois Glass Company.

Q. All right; go on?

A. The next piece is a lot on Second street, in Block 63, 68 feet, 9¾ inches on Second street. That was acquired by gift from Robert S. Brookings on May 12, 1899. That also is industrial property—warehouse property. No. 3. A lot of ground on Third street, City Block 66, frontage of 18 feet, 9 inches, by 100 feet, 7½ inches, acquired by deed of gift from Joseph B. Givens on November 17, 1930.

The Court (Q.): Do these deeds indicate any specific purpose in the gift?

A. Some of them do; not all of them. For instance, on the first parcel from Henry Shaw, that was given as an [fol. 88] endowment for the Shaw School of Botany. Most of them do not. No. 4 is a lot of ground on Broadway, City Block 118, 29 feet, 10 inches, by a depth of 127 feet, 6 inches. No. 5 parcel is grouped with that.

Mr. Burkhardt: What kind of property is the fourth piece?

A. Industrial business property. And the 5th, on St. Charles street, thirty feet on the south side of St. Charles street. Those two pieces were acquired on February 9, 1928, by way of exchange for the southwest corner of Locust and 29th street, property belonging to the University, which had been occupied by the Dental School up to the time the new building on Scott avenue was erected. That was a clear exchange. No. 6, a parcel on Elm street, City Block 134, fronting 135 feet by 100 feet, industrial property, acquired by purchase from Samuel Cupples Real Estate Company, December 23, 1911.

Q. You say that was acquired by purchase?

A. Yes.

Q. From what?

A. From the Samuel Cupples Real Estate Company.

Q. Where did you get the money?

The Court (Q.): What was the consideration?

A. I can't tell where the consideration came from. The University furnished it.

Q. That is business property?

A. Yes, sir.

Q. Go on?

A. No. 7, a lot on Sixth street, City Block 146, lot 16 and part of lot 15, acquired by purchase from Nathan Jacobs and Ellen Durning in June, 1902. No. 9, lot on Washington avenue, being lots 2 and 3, in City Block 178——

[fol. 89] Q. Have you finished with 6th street, or does your order change?

A. I am following the order given in the petition before the Tax Commission.

Q. Didn't you leave out City Block 162 on Sixth street?

A. Did I leave that out? No. 8, I skipped that for the present, and I'll come back to it in a moment. No. 9, a lot on Washington avenue, in City Block 178, being lots 2 and 3, acquired by purchase from Robert Brookings.

Q. Your order is different there?

A. I'll come back to No. 8 in a moment.

Mr. Burkhardt: I have No. 9 different too.

The Witness: I changed the order simply because I am grouping them where I can.

Q. All right; go ahead?

A. No. 9 was acquired—that is on Washington avenue——

Q. City Block what?

A. 178. That was acquired by purchase from Robert S. Brookings July 13, 1899.

Q. What is the character of the property?

A. Business property.

Q. All right.

A. Now, No. 8, which is in Block 162, being lots 6 and 7 on Sixth street. No. 10, in Block 187——

Q. Wait a minute.

A. No. 10——

Q. The order is different. I have a lot or parcel on 6th street, lots 6, 7 and 8—that is No. 8. Now, what street is the next one on?

A. Spruce street.

Mr. Burkhardt: I do not understand how parcel 8 was acquired.

Mr. Williams: We have not come to 8 yet.

[fol. 90] The Witness: Well, I'll give you parcel 8. That was acquired by purchase from—no, that was a gift.

Q. A gift from whom, and when?

A. Samuel Cupples and Robert Brookings, the conveyance being executed by St. Louis Terminal Cupples Station & Property Company, of which Mr. Cupples and Mr. Brookings owned all the stock, dated May 29, 1900. Now, parcel 10, on Spruce street, in City Block 187, was acquired by the conveyance last referred to. Also parcel 11.

Q. Now, what block is that in?

A. That is on 8th street, city block 187.

Q. Lot 4?

A. Lot 4, city block 187.

Q. All right. What is next?

A. The next is 12, which is on 7th street, City Block 417, frontage of 400 feet, by deed last referred to, Cupples Station Property Company. Also lot on 9th street, in City Block 417, having a frontage of 200 feet; acquired by the same conveyance on the same date. Also, lot on Spruce street, City Block 417, having a front of 145 feet, acquired on the same date by the same conveyance. Now, I am skipping again. Also, lot on Ninth street, in City Block 425——

Q. Just a second now.

A. How?

Q. Just a moment. 455?

A. 425.

Q. All right, go ahead?

A. Ninety-seven feet on Ninth street, by the same conveyance, from St. Louis Terminal Cupples Station; 97x127.

Q. That is a frontage of 97x102?

A. 97x127.

Q. All right; I have it.

A. Now, a lot on 9th street, City Block 427, fronting [fol. 91] 200 feet on Ninth, by a depth of 127. That is also covered by the conveyance from the St. Louis Terminal Cupples Station & Property Company. A lot on 9th street, City Block 427, fronting 200 feet—did I give you that?

Q. Yes, you gave that, 200 feet on Ninth street.

A. Well then, I'll give you the next parcel on 10th street, City Block 434, frontage of 200 feet by 127 feet deep, covered by the same conveyance. Now, a lot on 10th street, City Block 435, frontage of 145 feet by 127, also covered by the same conveyance. A lot on Clark avenue, City Block 435, frontage of 105 feet, depth 120, by the same conveyance from the St. Louis Terminal Cupples Station & Property Company, dated May 29, 1900. Next a lot of ground on Spruce street, City Block 425, frontage of 48 feet, 9 inches, and a lot on Spruce street, City Block 425, with a frontage of 53 feet——

Q. Nine inches?

A. Nine inches. Acquired by deed of gift from Robert S. Brookings, dated January 27, 1911.

Q. Yes.

A. A lot on Clark avenue, City Block 425, having a frontage of 75 feet, by 120, and a lot on 8th street, in City Block 425, having a frontage of 20 feet by 102.

Q. Wait a minute. 8th street?

A. City Block 425, frontage of 20 feet, by 102.

Q. All right?

A. Acquired by purchase on August 10, 1916, from Blanche V. Dillon and others.

Q. That is two parcels in City Block 425, one on Clark avenue with a frontage of 75x120, and the other parcel is on 8th street, having a front of 20 feet by 102, in City Block 425?

[fol. 92] A. Eighth street, a front of 20 feet, yes. That's all right. The next is a lot on Clark avenue, city block 425, with a frontage of 80x120, acquired by purchase September 2, 1916, from St. Louis Union Trust Company, a trustee of Dexter Tiffany. Now, a lot of ground on Clark avenue, city block 425, frontage of 90 feet on Clark, by 120 feet, acquired by purchase July 3, 1919, from Columbia Transfer Company.

Q. Yes. A lot on 10th street, city block 427, front of 200 feet by 127, acquired by purchase February 27, 1922, from Tiffany Real Estate Company. A lot on Olive street, in city block 509, a frontage of 25 feet by 69 feet.

Q. Can you look at the description there? Is that part of lot 18 and part of lot 19?

A. I suppose it is.

Q. 25x69?

A. Yes, sir. And then the property immediately to the west, being lots 20 to 23 on Olive street, in the same block 509, acquired October 4, 1929, from A. J. Goedde, in exchange for lots 18 and 19, 20, 21 and 22, in city block 897, fronting 125 feet on the south line of Locust street.

Q. In exchange for other property?

A. Yes. A lot on Washington avenue in city block 521, having a front of 106 feet, 11½ inches——

Q. Is that 521 or 531?

A. 521.

Q. Having a frontage of what?

A. Frontage of 106 feet, 11½ inches, by 132. Acquired by purchase from Patriot Realty Company, February 27, 1920. A lot on Washington avenue, in city block 522, E, with a frontage of 65 feet, 5 inches, by a depth of 132

[fol. 93] feet, acquired by purchase from St. Louis Provident Association, June 1, 1910.

Q. All right.

A. Lot on Locust street, in city block 829, fronting 275 feet by a depth of 155.

Q. All right.

A. Acquired by purchase from Olive—no, I would say Clove Realty Company, on May 12, 1909. A lot on Washington avenue, city block 834, a frontage of 78 feet, 9¼ inches, by 150 feet.

Q. Wait just a moment, please sir.

A. That is the northeast corner of 17th and Locust, Robbin's Lane and Locust.

Q. City block what number?

A. Locust street; city block No. 829.

Q. I thought you said Washington avenue?

A. I haven't given you that yet. Washington avenue, block 834, frontage of 178 feet, 9¼ inches, by 150, lots 1 to 3 and the eastern part of lot 4, acquired in May, 1899, by purchase from A. F. Ghio and others. There were three other grantors.

Q. All right, sir.

A. Lot on Locust street, city block 898, with a frontage of 250 feet by 155⅛ inches.

Q. Yes.

A. Of that parcel, the western 150 feet on Locust, running eastwardly from 19th, was a gift by Wayman Crowe and wife to the University as an endowment for the St. Louis School of Fine Arts, made June 5, 1879. The eastern 100 feet of that parcel was acquired by purchase, 50 feet on April 3, 1882, and the remaining 50 feet, March 7, 1884.

Q. Do you know what that 250 feet was used for?

A. Well, the 150 feet which was a deed from the Wayman Crowes, was the site of the old Memorial Hall, which Way-[fol. 94] man Crowe built as a memorial to his son, Wayman Crowe, Jr.; and as the deed said, it was given as an endowment for the School of Fine Arts; and the 100 feet east was acquired by the University as additional space for the School of Fine Arts.

Q. And was long occupied for that purpose?

A. Yes, and after the School of Fine Arts moved to the present campus, that group of buildings was destroyed by fire, and it is now the site of the Weber Implement Com-

pany on 19th and Locust street. Lots 45 to 54, inclusive, city block 929, with a frontage of 250 feet on the north line of Locust street, by 134 feet, 5 inches, acquired on June 1, 1855, by the University by purchase from Devereaux Bellemont.

Q. That was the parcel where the original University buildings were situated and long maintained, weren't they?

A. No. That is the location of the second Mary Institute building; and during the period of the World's Fair, after the University had leased the new buildings on the present campus to the Louisiana Purchase Exposition Company, the University occupied the old Mary Institute buildings on 27th and Locust street for a year or possibly more, until they moved out to the present campus.

Q. This piece of property you described on Locust street was occupied for many years by the Mary Institute department of the University?

A. Yes, that was the second home of the Mary Institute. The first home was on Locust just west of 14th street, where the Young Women's Christian Association building [fol. 95] stands now, and after the Mary Institute moved to 27th street, that building on Locust and 14th was occupied by the Law School.

Q. From this place at 27th and Locust, after many years, the Mary Institute moved still farther west?

A. Out to Lake, between Waterman and Westminster.

Q. And later, the Mary Institute moved again did it?

A. Yes, they moved to Warson and Ladue road.

Q. It received quite a large endowment for the new plant there?

A. Yes, Mrs. Sarah Glasgow Wilson gave $500,000 in cash for the new building, besides the larger part of the ground. Now, a parcel on Washington avenue, in block 2006, fronting 75 feet by 136 feet, 4 inches, acquired from the Burdeau Real Estate Company on December 28, 1929, in exchange for a large number of unimproved lots in the City of St. Louis and in Oklahoma City, Oklahoma, of which the University was equitable owner, the legal title to the lots being in the Avenue Corner Realty Company, all the stock of which the University had acquired by gift under the will of George Warren Brown.

Q. This was exchanged for that gift property?

A. Yes.

Q. Go ahead.

A. Undivided half interest in lot on Papin street, block 2234, with a frontage of 65 feet by 135 feet. I am grouping again a number of parcels which I will give you. Undivided half interest in lot on Papin street, in block 2234, with a frontage of 100 feet by 135 feet; also an undivided [fol. 96] half interest in lot on Minnesota avenue, in city block 2916, frontage of 25 feet by 127 feet; also undivided half interest in a lot on Enright avenue, in city block 3753, having a front of 28 feet by 155 feet; also undivided half interest in a lot on Ivanhoe avenue, city block 4812, lot 10.

Q. Just a minute now.

A. 50 feet by 150. Also an undivided half interest in Ivanhoe—a lot on Ivanhoe avenue, in city block 4813, and the north part of lot 14, fronting 35 feet by 127½ feet; also an undivided half interest in lot on Marmaduke avenue in city block 4816, 100 feet by 160. Also undivided half interest in a lot on Odell avenue.

Q. Just a moment.

A. City block 4818, 100 feet by 161. All those parcels were acquired, that is, the undivided half interests were acquired under the will of John F. Lee, deceased.

Q. That is, a gift by devise?

A. Yes, the other half going to St. Louis University. Now, a parcel on Forest Park boulevard, city block 3885, having a frontage of 90 feet by 160—is that in this present petition?

Q. Yes.

A. Well, it should not be, because it is not investment property. That is the Medical School dormitory.

Q. I am not making any distinction here on that. You can describe it?

A. All the property I have described heretofore is either unimproved, or it is industrial property or residence property; some of it flats, and some cheap buildings.

The Court (Q.): Revenue is derived from it?

A. Some of it, yes.

[fol. 97] Q. It is intended, for the moment, for the production of revenue when you can get it?

A. Yes, or for sale, if you can realize on it. But, this piece, ever since the building was put up—it was put up for a dormitory for the students at the Medical School—and has always been used for that purpose. That is on

Forest Park boulevard, in city block 3885, 90 feet on Forest Park.

Mr. Burkhardt: Do you know whether this particular item is in the tax bills for 1932 taxes; this Medical School dormitory?

A. Well, I don't know. It was in the tax bill for 1933 taxes, but I don't know about 1932.

Mr. Williams: Yes, that is included.

The Witness: The next is a lot on West Pine boulevard, city block 3920, 130 feet by 223. That was acquired on July 8, 1929, from the Bordeau Real Estate Company, in exchange for the Olivia building on the northwest corner of Grand and Windsor place.

Q. Where did you get the Olivia building?

A. The Olivia building we got from Nathan Frank in exchange for an apartment just east of the Chase Hotel on Lindell boulevard.

Q. Where did you get that apartment?

A. That apartment we got in a settlement with Chase Ullman. Mr. Bixby gave us the entire issue of second mortgage bonds on the Chase Hotel, and the Chase Hotel Company defaulted in the payment of the interest and principal, and we made a settlement with Chase Ullman, by which we got a considerable amount of cash and the Chase apartment from him. Title to the Chase apartment [fol. 98] was in him, and then we afterwards gave that to Nathan Frank for the Olivia building on Grand avenue, swapping one yellow dog for another. The next is on Laclede avenue, city block 3920, 80 feet by 223 feet and 3 inches.

Q. Just a moment, please?

A. Maybe that is not in the 1931 assessment. I don't know.

Q. I don't think it is.

Mr. Burkhardt: Maybe it was acquired after June 1st.

Mr. Williams: It is not in the tax bills.

A. Then we acquired it afterwards. The next is a parcel on McKinley avenue, city block 4782, 50 feet by 155, acquired February 19, 1924, by conveyance from Hattie F. Moser. That was purchased.

Q. What is that property?

A. It has flats on it.

Q. Where is it located with reference to the Medical School?

A. Immediately east of the Medical School.

Q. What was the purpose of the acquisition?

A. We acquired a number of properties or lots in that block, as prospective sites for new University buildings.

Q. For additions to the Medical School?

A. Yes, for additions to the Medical School.

Q. Acquired for that purpose?

A. Yes. The next is also on McKinley avenue, in the same block. The first was lot 5, and this is lots 6, 7 and 8, acquired for the same purpose by purchase from Laura Birdie (?) and others April 12, 1924. That is lot 6. Lots [fol. 99] 7 and 8 were acquired by purchase on June 10, or in June, 1910. There are also flats on that. Lots 9 and 10, in city block 4782, acquired January 3, 1923, from A. B. Ewing, Jr., and others.

Q. What was the purpose of that?

A. The same purpose, sites for Medical buildings, or departments of the School of Medicine. Lots 11 and 12, Block 4782 on McKinley—no, that's on Scott avenue.

Q. That's right; 11 and 12?

A. The ones I gave you before in 4782 are on Scott avenue, not McKinley avenue. They are in the same block, but on the other street.

Q. I think you are mistaken about that, according to my list here. I have a list of the descriptions exactly as you gave them.

Mr. Burkhardt: There is a piece on Scott in the same city block.

Mr. Williams: Yes.

The Witness: There are two parcels on McKinley, and there are—three parcels on McKinley, and we have had two so far, and there are two parcels on Scott avenue here, following each other.

Q. I have six pieces on McKinley on this list.

A. Let's go back a bit. A parcel acquired from Hattie Moser, that was lot 5, block 4782. Then there are lots 6, 7 and 8——

Q. That's right.

A. In the same block.

Q. Yes. And there are 9, 10, 11 and 12.

A. Hold on for a minute, 6, 7 and 8. Lot 6 was acquired in April, 1924, by purchase, from Louisa Burney and others. Lots 7 and 8 were acquired by purchase in June, 1910. [fol. 100] I can't find the name there. Then you come to lot 24, block 4782, which fronts on Scott avenue.

Q. All right; we'll come back to the other.

A. Lots 24 and 26, and the west part of lot 23, on Scott avenue.

Q. Wait a minute. 4782? Lots 24—What's that lot number?

A. Lot 24, 25 and 26.

Q. I have the western part of lot 23.

A. That is split up. Lots 24 and 25, and the western part of 23, and then lots 26, 27 and 28.

Q. That is right.

A. That's right. There are two parcels there on Scott avenue, fronting on Scott avenue, and lot 24 was acquired by purchase from Blasta Klist (?) February 15, 1924. Lot 25 by purchase February 8, 1924, and the western 25 feet of lot 23 by purchase from Helen Jaccard February 14, 1924.

Q. What was the purpose of the acquisition?

A. The same purpose.

Q. You mean the extension of the Medical School?

A. Yes, sir.

Q. Does that apply to 26, 27 and 28 on Scott avenue?

A. Yes. Lot 26, block 4782, was acquired by purchase from Crevella, February 14, 1924; lots 27 and 28 in the same block on Scott avenue, by purchase from Sebastian Grote, by trustee, November 26, 1930.

Q. Where is the Dental School located?

A. It is on the north side of Scott avenue. This is all on the south side. Next comes a parcel on McKinley avenue, block 4783, lots 23, 24 and 25, and the eastern part of lot 26, frontage 165 by 150. That was acquired January 13, 1911, by purchase from Shumware Realty Company.

[fol. 101] Q. What was the purpose of that, do you know?

A. That was acquired also for additional ground for the Medical group. All the vacant property, flats and improved property that we have on McKinley and Scott avenues, both sides, was acquired for that purpose, and there is still some there we would acquire if we could at a reasonable price. Now then, I'll group a number of parcels now.

Q. All right.

A. Parcel on Greer avenue, city block 5238, being lots 10 to 13; also lots 15 to 17 in the same block, and the western part of 18; also lot 22 in the same block 5238——

Q. I didn't get that.

A. Lots 22, 23 and 24 on Greer avenue; also lot 26.

Q. Well, go ahead. When was it acquired?

A. And lot 21. I'll give you those numbers again. Lots 10 to 13, 15 to 17——

Q. Part of 18?

A. Yes, and lot 22, lot 23 and 24, lot 26, lot 31 and the western part of 32.

Q. I haven't got those. I have lots 15 to 21.

A. Well, now then, there are some more. Those are all on Greer avenue.

Q. Yes?

A. A lot on Labadie avenue, city block 5238, lot 68 and the western part of 67, and the eastern part of 69.

Q. I have no Labadie avenue either. We are talking about taxes on property we owned June 1, 1931.

A. Well, I guess, as a matter of fact, those lots, probably, were not assessed. As I recall. I noticed that they were not.

Q. All right.

A. In 1931. We had acquired them before. I'll just complete that, if it is worth while.

[fol. 102] Q. What I want to get at here—you have given me lots 10 to 13. Tell me about those?

A. Well, they were acquired in the same way as this Oklahoma City property, under the will of George Warren Brown, deceased.

Q. You exchanged property you got from George Warren Brown for this property?

A. We got from the George Warren Brown estate, all of the stock of the Avenue Corner Realty Company, and the title to all these lots and the Oklahoma City lots was in the Avenue Corner Realty Company, and when it was dissolved it conveyed the title to the Washington University.

Q. These lots 10 to 13—is that true also of lots 15 to 17 and part of lot 18?

A. It is true of everything on Greer and Labadie avenues. Everything we have there we got in that way. Now then, a lot on Spruce street, city block 434, 187 feet by 210 feet, acquired by purchase May 31, 1907, from the Tiffany Real Estate Company; a lot on 11th street, city block 823,

60 feet by 100 feet, acquired on May 23, 1924, from the Burdeau Realty Company in exchange for property known as 2628-50 Washington avenue, and 1916-36 Olive street.

Q. Where did you get those pieces of property you exchanged with Burdeau, do you know?

A. Well, no, I can't tell you now. I have not been able to run all these down, but I am sure, from the character of the property, that they were gifts, every one of them.

Q. Do you have any property on Third street?

A. We have some property on the west side of Third, north of Olive.

[fol. 103] Q. I have a parcel of property on Third, city block 66?

A. That I have not called off to you?

Q. Yes.

A. Oh, well, I think I know what that is. That is 18 feet, 9 inches.

Q. That's right?

A. City block 66. I have given you that. That was acquired by deed of gift from Joseph B. Given November 17, 1930.

Q. I am still short on my list two parcels on McKinley avenue, in city block 4782, lots 9 and 10 and 11 and 12. Those are additions to the Medical School, are they?

A. Yes.

Mr. Burkhardt: They were acquired by purchase, weren't they?

A. Yes. They were all acquired by purchase.

Q. When you speak of property having been purchased by the University, what do you mean by that? Where do you get your money to purchase it?

A. Well——

Q. Is it investment by way of the endowment fund that you have?

A. It may be, yes. It probably is in many cases. Sometimes it is—of course, we sell one piece of real estate and reinvest it in another piece. That is still by way of endowment, of course.

Q. So, frequently you have taken property that has been given to you and exchanged it for other property?

A. Yes, sir.

Q. And there may be a subsequent exchange then?

A. Yes, there may be half a dozen different exchanges.

Q. What do you do with the income that you derive from the property?

A. From such property? Every cent of the income is [fol. 104] devoted to purely educational purposes; to running the schools.

Mr. Williams: Have we gone into this enough Your Honor, with respect to the descriptions of the property?

The Court:

Q. Yes. There is one question I want to ask. Some of these properties that you have spoken of as having been secured by outright purchases; were those properties secured and purchases made with surplus funds that you had on hand that were not needed for the purposes of the University?

A. Yes, usual endowment funds. Usually, money given us for endowment purposes, or proceeds of securities given us for endowment purposes, when we sell those securities, we would have to find some other investment for the money, and if we find the kind of real estate investment that answers our purposes, we would not hesitate to buy it. But, we have not loaded up with it, by any means. I may say I have here a list of sales made by the University of real estate. We sell what ever we can.

The Court:

Q. I understood you to say a while ago that there never was a surplus or excess of income over expenses or expenditures, of probably more than two or three thousand dollars, and sometimes a deficit of that amount?

A. Yes, that is right.

The Court:

Q. And you had, if I understand you correctly, you had no monies at the end of a year that you could call surplus in the sense that we usually use that term?

[fol. 105] A. In a business sense, no, we never have had, excepting these small amounts, as I say, ranging from $1,000 to $2,000, or $3,000; never in excess of that; and if there was—when there was a surplus of $1,000 or $2,000, or $3,000, instead of it being carried in a surplus account, it is treated as income for the following year.

Q. Part of the budget for the next year?

A. Yes.

The Court: All right.

The Witness: If Your Honor pleases, I can supplement this by a list of real estate that we sold in recent years, in my time. That is not a very long time, either. Washington avenue, the whole of the block bounded on the north by Washington, on the east by 17th, on the south by St. Charles, and west by 18th; another sale, the block bounded by Washington, St. Charles, 18th and 19th streets, except 60 feet on Washington. Those last mentioned parcels were originally the home of Washington University and of the Manual Training School and of Smith Academy; Washington University from 17th to 18th on the south side of Washington, and part of it running—all of it running over to Locust street, and then the Manual Training School on the corner of 18th and Washington, the southwest corner, and in that same block, on the south side of Washington avenue, the Smith Academy.

Mr. Williams:

Q. The Brookings home on Forsythe I believe it was, was that owned by the University, or did Mr. Brookings own it?

A. He built it and has deeded it to the University as a residence for the Chancellor.

[fol. 106] Q. Does the University derive any income whatever from any of that residence property along there?

A. No. The use of the house is part of the Chancellor's salary. He gets the use of the house because he is chancellor. He pays no rent for it.

Q. It is not furnished by the University I do not suppose?

A. The furnishings were a gift by Mr. Brookings to the University for that building, and they are left in the building and are used by the Chancellor.

Q. The Chancellor is often called upon, in a quasipublic capacity, to have meetings and receptions for persons here and for persons from abroad at his home?

A. Yes, very frequently, and the house was built for that purpose. When Mr. Brookings was president, he, of course, looked after that end of it; did the entertaining, largely, that has to be done by the head of the University. Now that largely devolves upon the Chancellor. To continue: A large tract of land on the north side of Enright avenue, bounded on the west by Belt avenue, and on the north by property of the Visitation Academy, on which was later

located the Manual Training School and Smith Academy.

Q. You are now describing property that you sold from time to time?

A. Yes, that was sold. Since then that has been sold. The northwest corner of Broadway and Wash street; property at 410-12 North Broadway. That was purchased by Nugene Dry Goods Company; the northeast corner of Franklin and 18th street; 5227-9 Waterman; 1744 Chouteau; [fol. 107] 3505-9 Franklin; 4452-62 Laclede; 50 feet on the north line of Olive, west of 16th street; 1916 Pine street; 1916-26 Olive street; corner of 13th and Poplar street; 2811 Washington avenue; 3810-12 Washington avenue; lots 29, 30 and 31, city block 4783, on south side of McKinley avenue; 908-16 Clark avenue; 106 feet on the north line of Kingshighway, city block 3889; all of city block 3888, except lots 17, 18, 19 and 20.

Q. Mr. Zumbalen, you spoke a moment ago of the University selling some of this property. Is the University able to sell this property without paying the taxes or assuming them?

A. It cannot sell any of this property that is embraced in this suit now.

Q. Without paying the taxes?

A. Because these taxes are a lien.

Mr. Williams: I think I have covered the matter, unless you have something in mind, may it please the Court.

The Court:

Q. In making an exchange of property, that you say you frequently do, and acquiring other property if there are delinquent taxes on the property which you acquire——

A. —we have to pay them, of course, unless the contract provides that the seller shall pay them.

Q. I understand if taxes are delinquent and due on the property, you pay them?

A. Yes, we do not question that, that taxes assessed before our title attaches, we must clear.

The Court: That is all.

[fol. 108] Re-direct examination.

By Mr. Williams:

Q. I'll ask you whether you owned all these properties we have gone over here, included in the tax bills notice, on the first of June, 1931?

A. Yes.

Q. All right. Have I omitted any questions that you have in mind?

A. Well, I had this in at the hearing before the Tax Commission, and it was thought——

Mr. Burkhardt:

Q. You do not mean a hearing in this particular case?

A. No, that is on later tax bills.

Mr. Williams:

Q. There was no hearing before the Tax Commission on these taxes in controversy here.

A. No, but it was thought important to put it in then, and I don't know if it is more important now, in view of the questions made by the City.

Mr. Williams: That has not been raised as yet.

At this point a recess was taken until 2 o'clock P. M., the same day, at which time the same parties being present, by counsel, further proceedings were had as follows:

Cross-examination.

By Mr. Burkhardt:

Q. This morning, in testifying about these various pieces of property, their manner of acquisition was classified in three ways: gifts, exchanges and purchases?

A. Yes.

Q. According to my figures, there were sixty parcels [fol. 109] altogether, many of which contained more than one lot?

A. Sixty-six, according to my list, 1933 assessment.

Q. There were some purchases after June 1, 1931?

A. Yes, sir.

Q. I believe my check is correct. There were sixty parcels included in the various tax bills, twenty-eight of which represented gifts to the University, six represented exchanges made by the University, and twenty-six parcels represented purchases made by the University. Now, of those sixty, how many were used, on June 1, 1931, for school purposes?

A. What do you mean?

Q. How many were improved with school buildings, or buildings used by the University, if any?

A. I think none of them, as I recollect.

Q. With the possible exception of the Medical School dormitory?

A. That was not on your list here.

Mr. Williams: Yes, it was.

Mr. Burkhardt: Yes, it was.

The Witness: It was on the 1932 assessment.

Mr. Williams:

Q. On the 1931 assessment, too?

A. That is the only one that was being used for school purposes. Others had been built originally for school purposes, but were no longer being used as such.

Q. There were also some parcels of ground purchased for future use?

A. Yes.

Q. For future use to the University?

A. Yes.

Q. Can you tell how many pieces of productive property [fol. 110] the University owned when they received their charter?

A. When they received their charter? None. They did not own any property.

Q. How many pieces of productive property did they acquire shortly thereafter; I mean five or ten years?

A. Well, I cannot give the actual figures on that. I have not checked up on that, but I can say this: I have checked up on this phase of it, as to the productive property covered by the tax bills involved in the suit that went to the United States Supreme Court.

Q. Yes. How many pieces were involved in that particular suit?

A. I can say now, positively, that three pieces were.

Q. Are any of those the same pieces of property involved here?

A. No.

Q. The majority of this property was all acquired after 1900, wasn't it?

A. The great part of it. The great bulk of it.

Q. I believe you did testify that none of it, with the exception of the Medical School dormitory, was on June 1, 1933, used for school purposes?

Mr. Williams: 1931.

Q. 1931.

A. 1931? Yes, that's true.

Q. Now, in this——

A. Pardon me. Used directly for school purposes; no education was being carried on.

Q. I mean all but the one item. That is leased out to the University or rented by the University.

A. Or property from which it was not receiving any income and was just holding, because it had been given to it, and it had not been able to dispose of it.

[fol. 111] Q. Referring to the item of purchases. That does not include property given to the University, but there were twenty-six items under that classification of purchases. I believe that ten of the twenty-six under that classification were purchased recently for additions to the Medical School?

A. Well——

Q. On Scott avenue and in that neighborhood?

A. All on Scott and McKinley avenue were purchased for that purpose.

Q. There have been some purchases since June 1, 1931, for that same purpose, is that correct?

Mr. Williams: I do not think that is material and I object to it as immaterial.

The Court: I'll hear it.

To which ruling of the Court the plaintiff, by counsel, then and there duly excepted and still excepts.

A. I do not recall now any that were purchased for that purpose in this list.

Q. My question was have there been any properties purchased since June 1, 1931, for additions to the Medical School?

A. I think not.

Q. What is the status of the plan for the addition to this Medical School; has construction been started?

A. No.

Q. Have plans been prepared?

A. Oh, there have been from time to time different plans prepared, which have been abandoned because of lack of means to carry them out at the time, and in course of time,

the original plans became obsolete and we would not carry them out today if we had the money.

[fol. 112] Q. There is nothing immediate with this problem of erecting additions to the Medical School?

A. No, I would say not, but largely, mind you, there is nothing immediate because we haven't got the money to put up the buildings.

Q. I see.

A. If we had unlimited means for that purpose, we would.

Q. But, nevertheless, the University did purchase the property?

A. Yes.

Q. All of that in view of the fact that you were confronted with a decreasing enrollment in the last few years?

A. We haven't purchased any in the last year since the decrease took effect at all.

Q. When did that take effect first?

A. It first became manifest, the first drop was in 1932-1933.

Q. I see.

A. The peak was in 1930-1931.

Q. Now, another parcel was the old site of the Fine Arts Building, that the University owned June 1, 1931. That was one site acquired by purchase, I believe?

Mr. Williams: No.

A. The Fine Arts Building?

Q. I mean the old site?

A. The site on Nineteenth and Locust.

Q. Yes, that was a piece of property purchased for that purpose?

A. Yes, sir.

Q. And then there was the old site of the Mary Institute that was purchased by the University, which has now been abandoned?

A. There are two sites of the Mary Institute.

[fol. 113] Q. I mean one of the parcels we have listed as purchased was the old Mary Institute site?

A. Two of them.

Q. Two of them are here?

A. Yes.

Q. Were both of those purchases?

A. No, I'll correct that. Only one is included. The one on Lake and Waterman is not included in this assessment.

Q. Then we have ten parcels——

A. Pardon me. Only the one at Twenty-seventh and Locust.

Q. Then we have ten parcels for the Medical School addition, and one parcel, being the old site for the Fine Arts Building, and one being the old site for the Mary Institute, and the balance of fourteen parcels that were purchased by the University?

A. Yes, sir.

Q. And those fourteen purchases represent investments made by the University, don't they?

A. Yes.

Q. They are not purchases made with any consideration to future occupancy by the University, or anything of that character?

A. No.

Q. They include, in the main, downtown property?

A. Most of those purchases were in what is known as Cupples Station District, and they were made in order to give more property for Cupples Station facilities.

Q. That is on Clark and Spruce; that is in downtown St. Louis?

A. Yes.

Q. You testified this morning that a number of the purchases were made by money received from endowment?

A. Yes.

Q. Also that some of the purchases were made out of general revenue?

[fol. 114] Mr. Williams: No, he did not say that.

A. No, I didn't say that.

Q. That is not true?

A. I say out of free gifts.

Q. And surplus?

A. And endowment money. That's all we can use for that purpose.

Q. You did not testify this morning—I may have misunderstood you—but I thought you said a certain amount of the surplus from each year's budget was sometimes invested in that?

A. No.

Q. With reference to the property classified under "exchanges," you testified you did not know how some of the property that was exchanged had been acquired?

A. That is true; I do not.

Q. You do not know whether some of the property that had been exchanged was purchased outright or received in other exchanges?

A. Or, it may have been gifts.

Q. Or, it may have been gifts. Under that classification, there are six of the parcels, is that correct?

A. Well, you counted them up, I haven't.

Q. One of those was this rather involved real estate transaction of the Olivia Building?

A. Yes, sir.

Q. That, in turn, was obtained by agreement with the owners of the Chase Hotel?

A. The owners of the Chase Hotel and Chase-Ullman.

Q. And the University owned some stock?

A. The University held a second mortgage on the Chase Hotel building proper.

Q. That is how the Olivia Building was acquired?

A. And there was a default in that mortgage, and the [fol. 115] Hotel Company was attempting to reorganize, and Chase Ullman, the originator of the hotel project, joined in that, and in order to get us to surrender and cancel the second mortgage on the Chase Hotel, which was in default, he gave us a first mortgage on the Chase Apartments, and I think about $60,000 in cash; and then we swapped the Chase Apartments for the Olivia Building, which was owned by Nathan Frank.

Q. Then the Olivia Building was traded?

A. Then the Olivia Building was traded for property on West Pine. I say the Olivia Building was traded—there was a large vacant lot in the rear of the building that was not included in the exchange, because we agreed to sell that whole property, which included the vacant property in the rear, to one Matz, a real state agent. He had signed a contract to take it and backed down and we sued him for specific performance, and he finally agreed to take the vacant property in the rear of the Olivia Building, which ran back to the street west of Grand avenue, and pay us a certain amount for that. I have forgotten what it was. That left us with the Olivia Building on hand, and that we exchanged for the building on West Pine.

Q. And the piece of property on West Pine is productive property?

A. Yes.

Q. In this classification of gifts, I notice seven parcels owned in conjunction with St. Louis University; you own an undivided half interest?

A. That is what we got under the will of John F. Lee.

Q. St. Louis University pays taxes on its half of the property?

[fol. 116] Mr. Williams: I object to that as immaterial.

A. I imagine they do. I don't know that is a fact. If they do, they pay because they have no fixed exemption such as Washington University has.

Q. Now, you had a list—read a list this morning—of the sales made during the last few years. Those sales were made during the last twenty-five years, weren't they?

A. The last twenty-five years? Did I say that?

Q. Since your connection with the University?

A. Yes.

Q. Can I see that, sir? These were outright sales. They were not exchanges or trades?

A. Not unless it is noted there.

Q. I did not note any this morning?

A. I don't think there are, but I would not be certain without going over it myself.

Q. How many of the sixty parcels would you say have been acquired in the last twenty-five years?

A. Oh, I don't know.

Q. Well, your best estimate?

A. Well, taking them by number of parcels alone, I should say at least half had been acquired in the twenty-five years, but taking them according to value, I think the number is much less, because I would treat all these parcels in which we have an undivided half interest as one gift.

Q. When you say value, do you mean the assessed value?

A. Actual value of the property, and then, of course, all those parcels acquired from the St. Louis Terminal Cupples Station & Property Company—there were eight or ten par-[fol. 117] cels there—and I treat that as one transaction, all by the same conveyance. That represents a very large amount of money value, whereas an equal number of parcels in which we have an undivided half interest represents a comparatively small amount as to value.

Q. But it does appear from sales that have been made in the last twenty-five years, and purchases also made according to your testimony, that the University has been continually buying and selling various pieces of property within the City of St. Louis?

A. Well, it has bought some and sold some, and there is another sort of transaction that I have not tried to differentiate, and that is that we have had to take in a number of pieces on which we had mortgages.

Q. These real estate transactions are carried on by whom? For the University I mean?

A. Colonel Isaac A. Hedges is the real estate man of the University.

Q. He has his own real estate company, has he?

A. No, he has no real estate company. He is agent for the University.

Q. He is a representative of the University?

A. Yes, sir.

Q. In making all these transactions I have heard about the company?

A. Well, he only recommends them to the Board. He does not make them. The Board authorizes him to make them.

Q. But he is your real estate agent?

A. Oh, yes, he is our real estate agent.

Q. You spoke of mortgages. How many of the sixty parcels have mortgages upon them?

[fol. 118] A. Well, I suppose all of the parcels we acquired—let's see. Probably a dozen parcels, perhaps a few more.

Q. Who holds those mortgages?

A. They were acquired from the St. Louis Terminal Cupples Station & Property Company. There is one mortgage coupling them all.

Q. Twelve parcels are all covered by a blanket mortgage?

A. Yes.

Q. Who holds that mortgage?

A. New York Life Insurance Company.

Q. Of course, they have no connection with Washington University?

A. None whatever, except that connection. They are a creditor of Washington University.

Q. They hold a mortgage on the property included in the tax bills?

A. Yes, sir.

Q. Is there any other parcel that has a mortgage upon it?

A. No.

Q. Have any of those gifts we referred to as having been made to the University—is there any one subject to a life estate in the grantor?

A. I think not. I do not recall any.

Q. You would recall if there were any, would you not?

A. Why, I think so.

Q. Do you recall, since your connection with the University, any gift being made in that manner?

A. No.

Q. The University has possession of all those sixty parcels of property?

A. Yes.

Q. I would like to see the mortgage list if you have that with you. I think you spoke of it this morning.

A. The mortgage list?

[fol. 119] Q. Yes; the list of those twelve pieces.

A. These figures refer to the items as contained in the petition before the Tax Commission.

Q. I understand that. How large a mortgage is that?

A. Well, it is a little over a million dollars now. It is being paid off at the rate of $50,000 per year.

Q. You would consider that a first-class mortgage, wouldn't you, Mr. Zumbalen?

A. I certainly would.

Q. In view of the character of the property and its location, and in view of the fact that it has been tax exempt in the past?

Mr. Williams: I object to that last question as immaterial and argumentative.

The Court: Answer the question.

To which ruling of the Court the defendant, by counsel, then and there excepted and still excepts.

A. Well, I don't know that the tax exemption adds anything to the security of the mortgage.

Q. You do know that is something—that taxes have to be paid, don't you?

A. The income from the property is many times sufficient to pay the amortization on the mortgage and interest on the mortgage, and it has been since we owned the property.

Q. This is a rather unusual piece of property in that respect, is it not?

A. It is.

Q. The property has always brought something above the mortgage and above the operating expenses, has it not?

A. Yes, a very substantial sum above it. A sum above it, [fol. 120] without which the University could never have grown to be what it is.

Q. You had a list this morning of donations made to the University of over $25,000 each?

A. Yes.

Q. I wonder if I could see that. This list that you hand me shows that there have been donations to Washington University for various purposes of $26,254,104, in sums of over $25,000 each?

A. Yes.

Q. Were those donations all in cash?

A. Oh, no.

Q. That represents real estate——

A. That represents all sorts of property, real estate, securities, bonds, stocks, cash.

Q. Of course, there are a number of cash gifts included in that item, aren't there?

A. Yes.

Q. And there are a number of cash gifts that have not been listed because they were less than $25,000?

A. Yes; and I am not sure that all gifts over $25,000 are in it, but this is as complete a list as I was able to make on short notice.

Q. Was there ever an appeal taken by the University to the local Board of Equalization in this matter?

A. I am not aware that there was, but I did not attend to that matter. I did not look after that end of the matter at all.

Mr. Burkhardt: Will you admit there was not, Mr. Williams?

Mr. Williams: I have already stated, Mr. Burkhardt, and I'll state again, that these taxes for the year 1932, it is my understanding that no appeal was taken to the City Board [fol. 121] of Equalization, and it is further my understanding that no appeal was taken to the State Tax Commission on these particular taxes for 1932, involved in this case.

The Court: In other words, the proposition to be submitted to the Court here is based on the assessment made by the Assessor; is that right?

Mr. Williams: This proposition that Mr. Burkhardt wants this in for is one that will have to be argued to your Honor.

The Court: I understand.

Mr. Burkhardt: I just wanted to have a record on it.

Mr. Williams: There is no doubt about it.

The Court: In other words, these taxes were levied and are now being attempted to be collected, based on the assessment made by the Assessor?

Mr. Williams: That is right.

The Witness: I may state, if it will help, if your Honor thinks it is material, that I never had any idea that there was any occasion to appeal from the Assessor to the Board of Equalization, unless we questioned the assessment made, that is, the valuation placed upon the property; or questioned the regularity, under the statute, of the Assessor's proceedings.

Mr. Burkhardt: I object to the voluntary statement and move it be stricken out.

The Court: The Court will hear it for whatever it is worth.

To which ruling of the Court the defendant, by counsel, then and there excepted.

Mr. Burkhardt: That is all.

[fol. 122] The Court:

Q. You spoke a while ago about the University owning the mortgage on the Chase Hotel, is that right?

A. Yes.

Q. What was the amount of that mortgage?

A. The second mortgage was $450,000. That is my recollection.

Q. Did you collect interest on the mortgage?

A. We did for a while, and then default was made in the interest and part of the principal when it matured.

Q. The interest payments made on that mortgage to the University, did that money go into your general University budget?

A. It did.

Q. Or, what was it spent for?

A. It went into the general University budget. The understanding was at that time that the bonds secured by the

mortgage were a gift from W. K. Bixby and that eventually, when the bonds were paid, the University would use a certain amount of the bonds in the erection of a building for the school of fine arts. As I say, the bonds never were paid and eventually Mr. Bixby furnished the money from another source for the erection of the building now occupied by the school of fine arts. Of course, whatever interest was collected on the mortgage went into the account we kept as the Bixby account at that time.

Recross-examination.

By Mr. Burkhardt:

Q. What other classifications of investments has the University made other than real estate?

A. Oh, any securities in general. Stocks, bonds, real estate mortgages.

[fol. 123] Q. How do those other investments compare in volume with the investments of the University in real estate?

A. In the last two years they have not held up nearly so well.

Q. I mean the amount invested, how does it compare with the amount invested in stocks and bonds?

A. I can't tell without referring to my reports which I have here.

Q. Have you an annual report or statement, or anything of that nature, that would give you that information?

A. Yes. For the year ending June 30, 1932, or do you want——

Q. Have you the year before?

A. I have the year—no.

Q. That's all right, then.

A. Yes, I have the year before, too. No, I have not. I have 1930.

Q. Give us 1930, and then 1932, if you will, please, sir?

A. For the year ending June 30, 1930, net revenue from the Cupples Station property was $391,700; from all other real estate owned by the University, $516,949; interest on bonds was $187,355; dividends on stocks, $151,152; interest on real estate mortgage notes, that is, notes secured by real estate mortgages, $54,107. For the year ending June 30, 1932, in rentals received from Cupples Station property, net $386,512; from all other real estate owned by the Uni-

versity, $528,319; interest on bonds, $262,677; dividends on stocks, $117,579; interest on real estate mortgage notes, $69,360. For 1933, ending June 30th, net rentals, Cupples Station, $335,150; all other real estate, $507.644; interest on bonds, $201.600; dividends on stocks, $59,429; interest [fol. 124] on real estate mortgage notes $66,681. So that, in the last year, while the net rentals on property, real estate, was comparatively stationary, the interest on bonds increased quite a bit showing we had not added to the one kind of property, and we had to the other.

Q. How did the dividends on stock compare?

A. I think they were larger in recent years than in prior years. It was $59,600 in the last year, and in 1930—no, the interest on stocks or dividends on stocks showed a decrease. In 1930 that item was $151,000 and last year it was the figure I have given you, $59,000.

Mr. Burkhardt: That is all.

The Witness: But the interest on bonds had increased.

By the Court:

Q. In your examination in chief, you stated that the revenue derived from all sources, whether tuition, productive property and every other source of revenue, went into the general budget for operating expenses, is that correct?

A. Yes, sir.

Q. All of it?

A. Every cent of it.

Q. Now, when would you apply to the credit of the budget fund these revenues and moneys derived from bonds, stocks and real estate?

A. The budget each year—the budget for each academic year which of course, runs from July 1st to the following June 30th, is made up in the spring of the year before. That is, next month we will begin working on the budget [fol. 125] for next year. We work on six months actual experience, that is, the six months receipts shown from July 1, 1933, to January 1, 1934, and then for the succeeding six months, I estimate what the income will be.

Q. You anticipate it?

A. Yes, from the—taking the experience of the prior six months, and in that way we get at what we deem will be approximately the revenue available for the next academic

year. Of course, in doing that, we necessarily have to set aside certain funds out of the income. For instance, with respect to the productive properties, we have to set aside money to keep them up, and make necessary repairs, and in some cases to operate them. That we deduct out of our estimates. That is, our actual estimate of what we anticipate will be the income from the properties over and above the necessary expenses of carrying the property.

Mr. Burkhardt:

Q. What was the biggest surplus the University has ever had in their budget?

A. I don't know that I can answer that exactly, because I have never had occasion to go over the reports prior to the time I became treasurer, which was nine years ago; but during my time as treasurer, the surplus has never exceeded $5,000 or $6,000.

The Court:

Q. And that was carried over into the next year?

A. That is carried over into the operating revenue for the next academic year. It is not set aside for the purpose of building up a surplus.

The Court: That is all.

[fol. 126] Redirect examination.

By Mr. Williams:

Q. The decrease in amount that you got from stocks indicates a stoppage or reduction of dividends?

A. Entirely so.

Mr. Williams: That is all.

Recross-examination.

By Mr. Burkhardt:

Q. That is more than made up, however, by the increase in your bonds that you received?

Mr. Williams: It is not as much as made up.

Mr. Burkhardt: It is offset to a large extent.

The Witness: To a large extent it is, but there is another element that has entered, and that is the drop in students.

A drop of three or four hundred in a student body means a large decrease in the University's income for that year, and you see from 1930-1931 to last year, there was a drop of three or four hundred in the student body.

Q. But it also effects a saving in view of the fact that each student costs the University twice as much as he pays?

A. That does not affect the saving for this reason: Even if we have a drop of two or three hundred students in a year, that does not mean that the cost of carrying the student is saved to the University, because we have to have the same teaching staff. They are employed, not from day to day, but for at least one year, usually longer periods than that.

Q. All of them?

A. The great majority of them are.

The Court:

Q. All on a salary?

A. Yes, all on a salary.

[fol. 127] Q. It is possible to curtail the staff?

A. No, in any school year we cannot cut down the staff because the number of students has decreased, because our contracts with those men are at least for one year, always.

Q. But, if you have a decrease for two or three years in a row, you can make the necessary adjustments?

A. We can to a certain extent. We cannot always, because some men we cannot afford to lop off, because we do not know that we would be able to get as good men to replace them. We expect, for instance, present conditions to change. We hope that they will and expect the change in the next two or three years. It is perfectly apparent to us, if not to the layman, that the man who is a valuable man as head of a department, or as an instructor in a department, cannot be laid off simply because for one or two years the University is going to suffer by paying him his salary; because if we let him out, we do not know who to get to take his place when we have to hire someone to take his place.

The Court: How do the salaries, taken as a whole, at Washington University, compare with salaries of other universities of like standing. I do not care to hear the amounts, but how do they compare; larger or smaller?

A. I can say that our salary list is, I should say, easily from forty to fifty per cent lower than that of the great [redacted]stern universities.

Q. How does it compare with our western universities in surrounding states?

A. It is lower than in some. I think some states im- [fol. 128] mediately east of us pay a salary scale on the whole that is higher than ours.

Recross-examination.

By Mr. Burkhardt:

Q. It is higher than some, too?

A. It is higher than some small universities and colleges, yes.

Q. The University of Missouri, it is higher than the University of Missouri?

A. I should say not. I have not made any comparison myself in the last couple of years, but when I was teaching in the Law School I kept tab on it and I found their salaries up there as a whole, in the Law School, were higher than our salaries.

Mr. Burkhardt: That is all.

Mr. Williams: That is all.

Dr. Malvern B. Cloptor, being first duly sworn, on behalf of the plaintiff testified as follows:

Direct examination.

By Mr. Williams:

Q. State your name.

A. Malvern B. Cloptor.

Q. You live here in St. Louis?

A. Yes, sir.

Q. What is your connection with the Washington University?

A. I am president of the corporation.

Q. How long have you been such, doctor?

A. A little over a year.

Q. Doctor, has the university any surplus of income over and above its needs?

Mr. Burkhardt: I object to that as too general.

[fol. 129] The Court: Mr. Zumbalen testified to the same thing. You may ask the doctor.

To which ruling of the Court the defendant, by counsel, then and there duly excepted.

A. We have practically no surplus. If we finish the year with the books balanced, particularly at this time, we feel very happy.

Q. Doctor, has the university any plans or needs for expansion of any sort that you think it ought to gratify?

A. There are a great many things we would like to expand in. We are constantly seeking aid for developing parts of the university, which we are compelled now to carry on in a way we would like to have improved.

Q. Can you mention some of those?

A. The medical school has many projects that it would like to carry on. We would like to add a psychiatric institution to the medical group. That was one of the main reasons for purchasing property to the east of the medical school, the buildings which are between McKinley and Scott avenue.

Q. Would you state, in your judgment, whether that is a need of the medical school to round it out?

A. It is a need.

Q. Have you the means or funds at hand to do it?

A. We have not, and that is the reason we are not going ahead with it. We are planning it, and when the funds are available we can go ahead.

Q. Have you any other needs in mind for the university that you are unable, at this time, to carry out?

A. I do not think any department of the university is satisfied with the way things are going. Each one has [fol. 130] plans for expansion when funds are available.

Q. How many men have you in your law school, full-time men?

A. I am afraid I can't answer that exactly.

Mr. Zumbalen: Seven.

Q. Seven. Have you any other needs in mind, doctor?

A. I do not feel that there is anything very specific. We have plans that call for developing certain activities. That is all I can say. Specifically, I would not like to

mention them, because they are not as yet formulated in a way so we can say what we are going to do.

Q. Have there been any salary cuts on the part of instructors and professors at the university in the last year or two?

A. Yes; there have been two salary cuts.

Q. Do you mind telling the Court what the percentage of them was?

A. The first cut was 4 per cent cut in the salaries. That was then brought to a 10 per cent cut the next year.

Q. Why was that cut made?

A. Because of insufficient funds.

Q. Did that involve other employes other than the teaching staff?

A. Everybne on the university pay roll except those who were getting below $60. I think that exemption was made.

Mr. Williams: That is all.

Cross-examination.

By Mr. Burkhardt:

Q. These plans for the expansion of the university are almost entirely confined to the medical school?

A. They are not. I said I did not care to mention the [fol. 131] others. I mentioned that because you had requested particular information about the land to the east of the medical school, and that is the reason that land was purchased.

Q. But you have plans for the expansion of other departments?

A. Every department in the university.

Q. Despite the increase or decrease in the enrollment?

A. That does not mean we cannot expand.

Q. As a matter of fact, doctor, haven't you got the newest building in the medical group only partly filled; by that I mean the eye, ear, nose and throat hospital?

A. That happens to be one that is dependent largely on an endowment from one of the funds that we received, which is part of the—the larger part of it is in real estate, which has been under discussion this morning, and the returns from this real estate have made it impossible for us to get funds to carry on certain work in the building.

Q. How much of the building is occupied and in use now?
A. The whole of the south half of the building, and about half of the north half.
Q. All the way up?
A. I say about half of the north half and all of the south half.
Q. Mr. Hedges is not on the staff of the university in any way, is he? He is the real estate expert?
A. That is all he has to do with it.
Q. Does he receive a salary, or is it a commission arrangement?
A. You will have to ask Mr. Zumbalen that. I don't know.

[fol. 132] Mr. Zumbalen: He receives a salary.
Mr. Williams: That is all.

HARRY B. WALLACE, a witness, of lawful age, being first duly sworn, on behalf of plaintiff testified as follows:

Direct examination.

By Mr. Williams:

Q. Where do you reside, Mr. Wallace?
A. In St. Louis.
Q. You are president of the Cupples Company?
A. I am.
Q. What official connection have you with Washington University?
A. Second vice-president of the corporation.
Q. Your name is Harry Brookings Wallace, and you are a nephew of Mr. Robert S. Brookings?
A. That is correct.
Q. Were you intimately associated with Mr. Brookings and Mr. Samuel Cupples?
A. Yes, sir.
Q. Were you familiar with their plans with respect to gifts to Washington University?
A. I certainly heard them discussed, and I think I was quite well informed or acquainted with what their plans were.
Q. I would like to ask you this question: Whether the fact that Washington University had the tax-exemption

feature was any consideration for the making of these gifts by Mr. Brookings and Mr. Cupples?

Mr. Burkhardt: I object to that as hearsay and not binding on the defendant.

The Court: If he knew it from the gentlemen who made the gifts, I think it is competent.

[fol. 133] To which ruling of the Court the defendant, by counsel, then and there duly excepted.

A. Mr. Brookings has told me that when he was asked to become president of the Washington University he had given consideration as to just what field he could accomplish the greatest amount of good, and he decided it was education. He was largely influenced to undertake the development of the Washington University because it had a charter which was, in substance, a contribution on the part of the city and state to the development of that university. He told me that the charter had been through the courts, and had been sustained by the Supreme Court of the United States, and therefore he went into the matter. He and Mr. Cupples together gave that Cupples Station property as an endowment to the university, feeling that would be the backbone of building the university up. He gave additional gifts from year to year in the way of medical school buildings and other buildings. He induced Mr. Bush, Mr. Cupples and Mr. Rebstock, and a number of others, to give gifts to the university; and I am quite sure these gifts, and the whole plan for the development of the university, was predicated to a considerable extent upon the charter which the university enjoyed.

Mr. Williams: That is all.

Cross-examination.

By Mr. Burkhardt:

Q. At the time Mr. Brookings told you these things, did he also tell you that at the time this charter was litigated in the United States Supreme Court, the University only [fol. 134] owned three parcels of property?

A. He did not tell me that, but I have heard it. I heard it today.

Q. You heard today that they own sixty parcels of various sizes?

A. I heard that testimony today.

Mr. Zumbalen: I did not say they owned three, but I said they owned three from which they were deriving revenue. I have since thought of one other.

Q. Well four revenue-producing pieces of property. Is Mr. Hedges listed on the pay-roll under salary, or a commission basis?

A. He is on a salary basis. He looks after, primarily, Cupples Station properties, and all the tenants there, and also advises us in reference to other real estate matters.

Q. He also looks after all the property mentioned in this suit?

A. Oh, no; no. Some of that property. He has not, as I understand it, the duty of looking after all of that property.

Q. It is——

A. Mr. Zumbalen can answer that question better than I can.

Q. It is too much for one man, is it not?

A. Well, I don't know. You might say it is too much. I don't know what you mean by that.

Mr. Burkhardt: I think that is all.

Mr. Williams: I want to offer in evidence a certified copy of the record in the case of Washington University v. Edward S. Raus, Collector of the Revenue of the County of St. Louis, Missouri, in the St. Louis Circuit Court of St. Louis County, October Term, 1867, No. 6389. I had [fol. 135] this transcript of the record made up, and there was omitted by mistake or oversight from the record the language of the preliminary injunction, and I had it certified afterwards. This transcript consists of the petition filed by Washington University asserting its exemption from taxation on the 2nd of August, 1867; (2) copy of the writ issued upon this petition; (3) full, true and complete copy of the demurrer as filed by the defendants to the petition on the 8th of October, 1867. Now, as an added sheet, which was omitted from the original transcript, certified under date of October 7, 1867, the preliminary injunction granted by the Court in this case. (4) Full, true and complete copy of the entry entered in the above cause on the 21st of December, 1867, overruling the demurrer, and entering final judgment in favor of the plaintiff and against the defendant; (5) true and complete photostatic copy of the mandate of the Supreme Court of Mis-

souri, as filed in the above-entitled cause June 7, 1870, as fully as the same remains of record. This original transcript I am going to ask the stenographer to mark "Plaintiff's Exhibit 2," and then this portion of the transcript which is on the separate paper, and contains the preliminary injunction, I'll ask him to mark "Exhibit 2-a," to indicate they belong together. I also want to offer in evidence the particular report in this case in the Supreme Court of the United States, the decision being in the case of Washington University v. Raus, reported in 8 Wallace 439. I haven't that report here, but I take it it may be offered with the same effect as if I had the report here and [fol. 136] read it in evidence. I'll give your Honor a copy of it.

Said exhibits offered in evidence by the plaintiff are in words and figures as follows:

Plaintiff's Exhibit 2

In the St. Louis Circuit Court, St. Louis County, State of Missouri, October Term, 1867. The Washington University, Plaintiff, vs. Edward S. Rowse, Collector of the Revenue of St. Louis County, State of Missouri, Defendant.

PETITION

Plaintiff states that it is a corporation duly organized and existing under the Acts of the General Assembly of the State of Missouri below stated:

That the said General Assembly of the State of Missouri incorporated the "Eliot Seminary" by an Act entitled "An Act to incorporate the Eliot Seminary" approved February 22nd, 1853, which is in the words and figures following:

"Be it enacted by the General Assembly of the State of Missouri as follows:

"Section 1. Christopher Rhodes, Samuel Treat, John M. Krum, John Cavender, George Partridge, Phocion R. McCreery, George Pegram, N. J. Eaton, James Smith, Seth Roulett, Mann Butler, William G. Elliott, Jr., John Row, Hudson E. Bridge, William Glasgow, Jr., Samuel Russell and Wayman Crow and their associates and successors are hereby constituted a body corporate and politic by the

name of 'the Eliot Seminary' and by that name shall have [fol. 137] perpetual succession and be capable of taking and holding by gift, grant, devise or otherwise, and conveying, leasing or otherwise disposing of any estate, real, personal and mixed, annuities, endowments, franchises and other hereditaments which may conduce to the support of said Seminary, or to the promotion of its objects; all property of said corporation shall be exempt from taxation and the sixth, seventh and eighth sections of the first Article of the Act concerning corporations, approved March 19th, 1845, shall not apply to this corporation.

"Section 2. The management of the affairs of this corporation shall be vested in a board of seventeen directors; the persons herein named shall constitute the first board of directors. Vacancies occurring in the board by resignation, death or otherwise, shall be filled by the board.

"Section 3. The board of directors may prescribe the course of instruction in said Seminary and organize the institution under such regulations and provide in such way as they may deem proper for the appointment of its professors, teachers and other officers, and may make such by-laws and rules as they may deem necessary for the management of the institution.

"Section 4. This act shall take effect upon its passage.

"Approved February 22, 1853."

[fol. 138] That under said Act said "Eliot Seminary" without delay organized for the purposes therein stated and was an existing corporation under its said corporate name and by said name acquired and held property as such and in all respects exercised and enjoyed the rights and franchises by said Act conferred until the passage of the Act next hereinafter mentioned.

That afterwards the said Act of the said General Assembly was amended by an amendatory act entitled "An Act to amend an Act entitled 'An Act to incorporate the Eliot Seminary'", approved Feby. 12, 1857, which is in the words and figures following:

"Be it enacted by the General Assembly of the State of Missouri, as follows:

"Section 1. The name of the corporation known as 'The Eliot Seminary' shall henceforth be 'The Washing-

ton University,' by which name the said corporation shall have, hold and enjoy all the property, rights, franchises, endowments, immunities and privileges conferred upon and belonging to the Eliot Seminary.

"Section 2. No instruction either sectarian in religion or party in politics shall be allowed in any department of said University, and no sectarian or party test shall be allowed the elections of professors, teachers, or other officers of said University or in the admission of scholars thereto or for any purpose whatsoever.

[fol. 139] "Section 3. It shall be the duty of the Board of Directors of said University upon being informed of any violation of the second section of this act forthwith to institute an enquiry into the charge or charges that may be preferred in respect thereof by any credible person in writing against any officer of said University; and if it shall appear that any officer of said University has violated the said second section of this act, the Board of Directors shall forthwith remove such person so offending from any office which he may then fill in any department of said University, and such person so removed shall be forever thereafter ineligible to any office in said University.

"Section 4. In case the Board of Directors upon being notified in writing by any credible person of a violation of the second section of this Act, shall refuse or neglect to investigate the charge thereupon preferred against any officer of said University, it shall be competent for the St. Louis Circuit Court, or the St. Louis Court of Common Pleas, to compel the Board of Directors by mandamus, to perform their duty in investigating such charge, and to show their performance of such duty to the satisfaction of the Court having cognizance of the matter, and all proceedings under this section shall be summary, and conducted to a conclusion with as little delay as possible; and the power hereby given to the said courts may be exercised by the judge of either of said tribunals in vacation.

[fol. 140] "Section 5. Whereas the said Eliot Seminary has purchased for the purpose of erecting thereon university buildings, a tract of land within the present corporate limits of the City of St. Louis, containing about three 40/100 acres of land, bounded on the East by an alley, on the West by Beaumont Street, on the South by Locust

Street, and on the North by Washington Avenue. And Whereas said tract of land, before being conveyed to the said corporation was described and designated in a plat filed in the Office of the Recorder of Deeds of St. Louis County as a part of an addition to the City of St. Louis, and certain streets and alleys were marked and shown on said plat as traversing said tract, but were never actually opened and laid out on the ground through said tract; and whereas, it is desirable that the buildings proposed, the said University, should cover a large portion of said tract, and that the whole thereof should be within one enclosure, and secure from uninterruption or disturbance; therefore, it is hereby enacted, that all streets and alleys existing in contemplation of law, through, over or upon the said tract of land, so acquired by said corporation as aforesaid, shall be and the same are hereby vacated and abolished; and it shall not be lawful for the City of St. Louis or the County of St. Louis to open any road, street, alley or avenue through or over said tract or any part thereof so long as it shall remain the property of said corporation without the consent of the Board of Directors [fol. 141] of said University expressed by resolution formally entered upon the minutes of their proceedings.

"This act shall be in force from and after its passage.
"Approved February 12, 1857."

That said last mentioned act was immediately and duly accepted by said Eliot Seminary as an amendment to the charter thereof then previously in force and that said new corporate name of "The Washington University" was immediately adopted and ever since has been and now is used by said corporation, to-wit, the plaintiff.

That said defendant Rowse is the Collector of the Revenue for said St. Louis County, duly appointed and qualified as such according to law, and is now engaged in discharging his duties as such in collecting State, County, Military and School Taxes therein.

That plaintiff has constantly been actively employed in the legitimate prosecution of the specific purpose of its incorporation in said Charter set forth; that it has established in said City of St. Louis and now maintains therein schools of a high order for the education of the young of both sexes at an annual expense of many thousand dollars;

That by gift, grant and devise from sundry persons in aid of the said purposes thereof, and in consideration of the special provisions of said Acts of Incorporation above set forth said corporation has acquired a large amount of [fol. 142] property as well real as personal in the County of St. Louis, Missouri, and now owns the same in fee simple and absolutely; that the defendant as such Collector now holds among other tax bills for State, Military, County and School Taxes in his hands for collection two tax bills against plaintiff for State, County, Military and School Taxes for the year 1866 assessed against sundry parcels of land and improvements thereon situated in said County of St. Louis and of which plaintiff is the real owner and which were in fact the property of plaintiff at and before the time of such assessment.

That said bills for said taxes were made out by the officers of said County authorized by law to assess property in said County for such taxes and were delivered to and are now held by defendant for collection in the manner provided by law.

That the total amount of said two tax bills is Three Thousand Five Hundred and Nineteen 04/100 Dollars ($3519.04) and true copies thereof are herewith filed and made a part of this petition, and are marked Exhibits A and B respectively.

That defendant has demanded payment of said tax bills and payment thereof having been refused by plaintiff defendant is now about to proceed to collect the same by levy and sale of said lands, and has advertised the same as delinquent and liable to be sold for nonpayment of said taxes thereon in the manner provided by law in respect [fol. 143] to delinquent taxes on lands in St. Louis County.

Plaintiff further states that by reason of the provisions of said first mentioned Act of February 22d, 1853, incorporating said Eliot Seminary, and of said Act amendatory thereof, said taxes are illegally assessed and are not nor any part thereof lawfully due from nor payable by plaintiff, all property of plaintiff being by said Acts expressly exempted from taxation at all times;

That if defendant makes a levy and sale of said lands or any part thereof for the collection of said tax bills no adequate remedy will be afforded to plaintiff by an action for damages against said defendant because by such sale and pending such suit a cloud will be cast upon the title of

plaintiff to said real estate, a part of which plaintiff is now endeavoring to sell in order to obtain money for its charitable purposes, and also because the same question would arise each successive year in respect to successive tax bills assessed against plaintiff.

Wherefore the plaintiff prays this Honorable Court for its order enjoining and restraining the defendant as such Collector from collecting by levy and sale as aforesaid the money claimed for taxes in and by said two tax bills or any part thereof, and from offering said lands or any part thereof for sale for any taxes alleged to have been assessed against the same; and also that defendant be adjudged to pay the costs of this proceeding.

[fol. 144] And as in duty bound this plaintiff will ever pray.

(Signed) Henry Hitchcock and George W. Lubke, Attorneys for Plaintiff.

Seth A. Roulett, Treasurer and Agent for plaintiff, having been duly sworn according to law on oath says the foregoing petition and the matters therein stated he believes to be true.

(Signed) S. A. Roulett.

Subscribed and sworn to this Second day of August, A. D. 1867. Witness my hand and the seal of said court.

(Signed) Frank. A. H. Schneider, Clerk of the St. Louis Circuit Court.

SUMMONS

The State of Missouri, to the Sheriff of St. Louis County, Greeting:

We command you to summon Edward S. Rowse, Collector of the Revenue of St. Louis County, State of Missouri, to appear before the Judges of our Circuit Court, on the First day of the next Term thereof to be held in the City of St. Louis, within and for the County of St. Louis, on the First Monday of October next then and there to answer the complaint of The Washington University as set forth in the annexed petition; and have you then and there this writ.

Witness, Frank A. H. Schneider, Clerk of our said Court, with the seal thereof hereto affixed, at office, in the City of

[fol. 145] St. Louis, this Second day of August in the year of our Lord, eighteen hundred and sixty-seven.

(Signed) Frank A. H. Schneider, Clerk. (Seal.)

I acknowledge myself bound for all costs that may accrue in the case of —— against ——.

Witness my hand and seal at St. Louis, this — day of ——, 186—.

——. (Seal.)

St. Louis Circuit Court, October Term, 1867

The Washington University, Plaintiff,

vs.

Edward S. Rowse, Collector of the Revenue of St. Louis Co., Defendant

Demurrer of the Defendant to the Petition of the Plaintiff

The defendant demurs to the petition of the plaintiff and says that the same does not set forth facts sufficient to constitute the — -or a cause of action and for special cause of demurrer shows that the said plaintiff has not by its said complaint made such a case as entitles it to the relief prayed by its said complaint against this defendant wherefore he prays judgment whether he shall be compelled to make any further or other answer to the said complaint and prays to be hence dismissed with his reasonable costs in this behalf sustained.

H. A. Clover, for Deft.

[fol. 146] State of Missouri,
City of St. Louis, ss:

In the Circuit Court, City of St. Louis, December Term, 1867

Saturday, December 21st, 1867.

The Washington University

vs.

Edward S. Rowse, Collector of the Revenue of St. Louis County, State of Missouri

Judgment

The demurrer to the petition being submitted to the Court and the Court being fully advised of and concerning the

premises, doth order that the same be overruled. Whereupon the defendant declining to plead further herein it is ordered by the Court that final judgment be entered herein for the plaintiff on the demurrer. It is therefore considered by the Court that the injunction heretofore granted herein on the 7th day of October, 1867, be and the same is hereby made perpetual and that the plaintiff recover of the defendant his costs and charges in this behalf expended and have execution therefor.

IN THE SUPREME COURT, HELD AT ST. LOUIS, OF THE STATE OF MISSOURI, MARCH TERM, 1870

May 14, 1871.

THE WASHINGTON UNIVERSITY, Defendant in Error,

vs.

EDWARD S. ROWSE, Collector &c, Plaintiff in Error

JUDGMENT

Error to the St. Louis Circuit Court.

Now again comes the defendant in error and moves the Court in compliance with a mandate of the Supreme Court of the United States heretofore filed, to set aside and vacate its former judgment reversing the judgment of the St. Louis Circuit Court herein; and that the judgment of the said St. Louis Circuit Court be affirmed; wherefore the Court [fol. 147] orders that its former judgment herein be vacated and that the judgment of the said St. Louis Circuit Court be in all things affirmed and stand in full force and effect and that the said defendant in error recover of the said plaintiff in error its costs and charges herein expended and have execution therefor.

STATE OF MISSOURI, ss:

I, A. T. Fishback, Clerk of the Supreme Court, held at St. Louis, of the State of Missouri, certify that the above and foregoing is a full, true and complete copy of the judgment rendered in the above entitled cause, as fully as the same remains of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office in the City of St. Louis, the Fourth day of June, A. D. eighteen hundred and seventy.

(Signed) O. T. Fishback, Clerk. Per J. F. Bain, D. C. (Seal.)

STATE OF MISSOURI,
City of St. Louis, ss:

I, John Schmoll, Clerk of the Circuit Court, City of St. Louis and State of Missouri, do hereby certify the above and foregoing is a full, true and complete photostatic copy, First, of the petition as filed on the 2nd day of August, 1867 in cause numbered 6389 of the causes of this Court, wherein The Washington University is party plaintiff and Edward S. Rowse, Collector of the Revenue of St. Louis County is party defendant; Second, a full, true and com- [fol. 148] plete photostatic copy of the writ as executed by the Clerk of the Circuit Court on the 2nd day of August, 1867; Third, a full, true and complete copy of the demurrer as filed by defendants to the petition on the 8th day of October, 1867; Fourth, a full, true and complete copy of the record entry entered in the above entitled cause on the 21st day of December, 1867, overruling said demurrer and entering final judgment in favor of plaintiff and against defendant, on said demurrer; Fifth, a full, true and complete photostatic copy of the Mandate of the Supreme Court of the State of Missouri as filed in the above entitled cause on the 7th day of June, 1870, as fully as the same remain of record and on file in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, this 30th day of December, 1932.

(Signed) John Schmoll, Clerk, Circuit Court. (Seal.)

Plaintiff's Exhibit 2-A

STATE OF MISSOURI,
City of St. Louis, ss:

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS, OCTOBER TERM, 1867

Monday, October 7, 1867.

No. 6389

THE WASHINGTON UNIVERSITY,

vs.

EDWARD S. ROWSE

PRELIMINARY INJUNCTION

Now at this day comes the plaintiff by its attorney and presents to the Court its bond for an injunction executed [fol. 149] according to law in the penal sum of Six Thousand dollars with Wayman Crow and Henry S. Reed, as securities, and prays for an order of injunction herein, wherefore it is ordered by the Court that said bond be approved, and it is further ordered that said defendant his agents and servants be enjoined and restrained from collecting the taxes mentioned in the petition, or from enforcing the collection thereof by the sale of the property mentioned in the petition until the further order of this Court.

A true copy from the record.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at office, in the City of St. Louis, this 16th day of February, 1934.

(Signed) John Schmoll, Clerk, Circuit Court. (Seal.)

Mr. Williams: There is just one thing further: I had Mr. Edmond Koeln, who is a very nice gentleman, called, but he cannot be here today, because he had to be in another court. What I expected to ask him was this (I think Mr. Burkhardt, probably, will be in a position to state that this is his position): I allege that he intends to proceed and enforce these taxes, and that he intends to proceed and

sell this property for taxes, unless otherwise ordered or directed by this Court.

Mr. Burkhardt: I'll agree that the Collector intends to take whatever steps are required of him by the law.

Mr. Williams: Including the exercise of the power of sale?

[fol. 150] Mr. Burkhardt: Yes.

Mr. Williams: All right.

The Court: He cannot sell real estate until he gets a judgment, can he?

Mr. Williams: Yes, he can, under this new law. That's the trouble with this case; otherwise, we would not be here. The plaintiff rests.

Mr. Noble (continuing): —with exhibits attached may be treated as the depositions of the witnesses mentioned in this cause.

Plaintiff offers in evidence Laws of Missouri, 1853, page 290, being the Act of the Legislature granting a charter to Eliof Seminary; also Laws of Missouri, 1857, page 610, changing the name of Eliot Seminary to Washington University.

Which said last offers on the part of the plaintiff were thereupon received in evidence, and are in words and figures following, to-wit:

See Plaintiff's Amended Petition, pp. 3 to 7.

Mr. Noble: Plaintiff offers in evidence Book B—3075, page 387 of the records of the Recorder of Deeds of Jackson County, Missouri, at Kansas City.

Do you want to admit that we own these properties described in our petition or do you want me to put them in?

Mr. Cunningham: I think it would be better to put them in because it would show—

Mr. Noble (continuing): —being a General Warranty Deed from Davidson Realty Company to Washington Uni-[fol. 151] versity, a Missouri corporation, dated May 2, 1932, filed for record May 5, 1932, covering all of Lots 313, except part in Main Street, Block 24, McGee's Addition to the City of Kansas, now Kansas City, Missouri.

Mr. Cunningham: May I inquire off the record?

(Discussion off the record.)

Which said last offer on the part of the plaintiff was thereupon received in evidence and is in words and figures following, to-wit:

Mr. Noble: Plaintiff offers in evidence Book B-2989, page 316 of such records, being the warranty deed made from the University Building Company to Washington University, dated January 14, 1931, filed for record January 19, 1931, covering Lots 6 and 7, Block 2, Ashburn's Addition to the City of Kansas, now Kansas City, Missouri.

Which said last offer on the part of the plaintiff, was thereupon received in evidence, and is in words and figures following, to-wit:

Mr. Noble: Plaintiff offers in evidence Book B-502, page 451 of such records, being a warranty deed from Henry J. O'Brien and Agnes O'Brien, his wife, to Arthur Lee, dated May 31, 1892, covering Lot 10, Block 6, McDaniel's Addition, in Kansas City, Missouri; also Book B-791, page 508 of such records, being an authenticated copy of will of Arthur Lee, and order admitting the same to probate by which the property last described was devised to John F. [fol. 152] Lee; also Book B-3042, page 151 of such records, being an authenticated copy of will of John F. Lee and order admitting the same to probate by which the property last described was devised one-half to Washington University and one-half to St. Louis University; also Book B-3300, page 106 of such records, being a deed from St. Louis University to Washington University, dated April 17, 1937 and recorded April 30, 1937, covering all interest of St. Louis University in such property, such deed being a partition between the two universities of the property devised by John F. Lee——

The Court: What did they do, give half to St. Louis University and half to Washington?

Mr. Cunningham: That is one particular point; one-half was taxable under the Constitution and the other half not.

Which said last offers on the part of the plaintiff, were thereupon received in evidence, and are in words and figures following, to-wit:

Book B-3300, pages 106-107:

A-597197.

Quit Claim Deed

This Deed, made and entered into this seventeenth day of April, nineteen hundred and thirty-seven, by and between St. Louis University, a corporation of the City of St. Louis, State of Missouri, party of the first part, and Washington University, a corporation of the County of St. Louis, State of Missouri, party of the second part.

[fol. 153] Witnesseth, that the said party of the first part, for and in consideration of the sum of One Dollar ($1.00) and other valuable considerations paid by said party of the second part, the receipt of which is hereby acknowledged, does by these presents Remise, Release and forever Quit Claim unto the said party of the second part the following described Real Estate, situate in the County of Jackson, and also in the City of St. Louis, and State of Missouri, to-wit:

1. The Western ten (10) feet of Lot Fifty Eight (58), all of Lots Fifty Nine (59) and Sixty (60) and the Eastern Twenty (20) feet of Lot Sixty-One (61) of Jackson's Subdivision and in Block Twenty Two Hundred Thirty-four (2234) of the City of St. Louis, fronting eighty-five (85) feet on the South Line of Papin Street, by a depth Southwardly of one hundred thirty-five (135) feet to an alley; bounded East by Crompton Avenue, together with rights in and to Papin Street an alley, when and if, vacated.

2. A lot in Breezy Heights and in Block 4818 of the City of St. Louis, fronting 100 feet on the South Line of Odell Avenue, by a depth Southwardly of 161 feet 7½ inches, more or less to an aney on which there is a width of 95 feet; bounded East by Ivanhoe Avenue and West by property of Bushell. Together with the improvements thereon known as and numbered 6700-02 Odell Avenue.

[fol. 154] 3. The Southern 35 feet of lot 14 of McCune's Subdivision and in Block 4813 of the City of St. Louis, fronting 35 feet on the west line of Ivanhoe Avenue by a depth Westwardly between parallel lines to right-of-way of St. Louis-San Francisco Railway. Bounded on the North by Cupples property.

4. Lot 10 Block 6 of McDaniel's Addition to Kansas City in Jackson County, Missouri, said lot known as 610 McGee Street, in Kansas City, Missouri.

5. Lot in Block 54 of Eller's Survey of Carondelet and Block 2916 of the City of St. Louis, fronting 25 feet on the east line of Minnesota Avenue by a depth Eastwardly of 137 feet 11 inches to an alley; bounded South by property now or formerly of Ida M. Bauer, and north by property now or formerly of Emil Groberg and wife.

To have and to hold the same, together with all rights and appurtenances to the same belonging, unto the said party of the second part, and to its successors and assigns forever.

So that neither the said party of the First Part, nor its successors, nor any other person or persons for it or in its name or behalf, shall or will hereafter claim or demand any right or title to the aforesaid premises, or any part thereof, but they and every one of them shall, by these presents, be excluded and forever barred.

[fol. 155] In Witness Whereof, the said party of the first part has executed these presents the day and year first above written.

Attest:

Internal Revenue $5.50 St. L. W. 4/14/37. (Seal.)
Joseph L. Dairs, S. J. Secretary.

St. Louis University by H. B. Crimmins, S. J. President. (Corporate Seal.)

STATE OF MISSOURI,
City of St. Louis, ss:

On this 20th day of April, 1937, before me appeared H. B. Crimmins, S. J., to me personally known, who being by me duly sworn, did say that he is the President of St. Louis University, a Corporation, of State of Missouri, and that affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors; and that H. B. Crimmins, S. J. acknowledge said instrument to be the free act and deed of said corporation.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal in the City and State aforesaid, the day and year first above written.

(L. S.)

Frederick R. Danley, Notary Public. (Seal.)

[fol. 156] My term expires Nov. 2, 1938.

Filed and Recorded Apr. 23, 1937, at 10:03' 30" A. M.
John P. English, Recorder.

STATE OF MISSOURI,
City of St. Louis, ss:

I, the undersigned, Recorder of Deeds for said City and State, do hereby certify that the foregoing instrument of writing was filed for record in my office, on the 23, day of April A. D., 1937, at 10:03' 30 o'clock A. M. and is duly recorded in Book 5650, page 509.

Witness my hand and official seal on the day and year aforesaid.

John P English, Recorder.

Filed for record and duly recorded in my office on this 30th day of April, A. D. 1937 at 1 o'clock 37 minutes P. M. Joseph S. Crisp, Recorder, By William G. Holmes, Deputy.

Mr. Noble: Plaintiff offers in evidence the abstract of the record in the case of Washington University against Rouse, as shown at page 98 and following of the abstract of the record in the suit of Washington University against Koeln.

Which said last offer on the part of the plaintiff was thereupon received in evidence, and is in words and figures, see pp. 136 to 150 of this abstract.

Mr. Noble: Plaintiff offers in evidence the transcript of the record in the suit of Washington University against [fol. 157] Koeln, including the petition, answer and other parts of the record.

Which said last offer on the part of the plaintiff was thereupon received in evidence, and is in words and figures, see p. 67 to p. 150 of this abstract.

Mr. Noble: That is our case.

The plaintiff here rested its case.

OFFERS IN EVIDENCE

Mr. Cunningham: Kansas City offers in evidence Chapter 34, Article 1, Section 7 of the Revised Statutes of Missouri of 1845, as follows:

"A charter of every corporation that shall hereafter be granted by the Legislature shall be subject to alteration, suspension and repeal, in the discretion of the Legislature."

Mr. Noble: Plaintiff objects to the offer just made for the reason that the Act granting this Charter to Washington University specifically states that the Legislative Act just offered in evidence shall not apply to it.

The Court: Objection overruled.

Mr. Cunningham: Kansas City asks that certain tax bills which are now identified as tax bills of Kansas City involved in this case, Tract No. 44,483; Tract No. 44,564; Tract No. 86,757; No. 113,845; No. 44,700; No. 87,809; No. 115,330; No. 44,367; No. 86,545; No. 113,398; No. 45,131; No. 87,568 and No. 115,273 be identified as Kansas City's exhibit of taxes claimed——

(Reporter here identified documents last above referred to collectively as Exhibit No. 2.)

Mr. Cunningham (continuing): And are hereby introduced in evidence.

[fol. 158] Which said last offer on the part of the defendants was thereupon received in evidence, and is in words and figures, see p. 48 for photostatic copies.

Mr. Cunningham: I think that is all.

The defendants here rested their case.

Mr. Noble: May I reopen my case and offer in evidence all tax bills attached to the amended petition of the plaintiff in the case that is which you, yourself, introduced, but I also ought to have it as part of my case.

Which said last offer on the part of the plaintiff was thereupon received in evidence and is in words and figures, see photostats, p. 48.

This was all the testimony introduced in the case.

Mr. Cunningham: Now, is there anything else?
How much time do you want on briefs?

(Discussion off the record.)

Thereupon the case was by the Court taken under advisement.

And afterwards, and on the 24th day of February, 1940, the same being the 41st day of the regular January, 1940, term of said Court, the Court rendered the following Order,

Judgment and Decree in said cause in words and figures following, to-wit:

JUDGMENT

On the 26th day of January, 1940, this cause came on regularly for hearing and the parties appearing by proper representatives and by their respective attorneys, and the [fol. 159] cause was submitted to the Court upon the pleadings and evidence adduced and by the Court taken under advisement. Now on this 24th day of February, 1940, the Court being fully advised in the premises doth find all the issues herein in favor of plaintiff and against defendants.

It is, Therefore, Ordered, Adjudged and Decreed as follows:

That the parcels of property and each of them, described in plaintiff's petition as owned by plaintiff, viz:

All of Lots six (6) and seven (7), Block two (2), Ashburn's Addition to the City of Kansas, now Kansas City, Missouri, according to the recorded plat thereof.

All of Lot three hundred thirteen (313) (except part thereof in Main Street) in Block Twenty-four (24), McGee's Addition to the City of Kansas, now Kansas City, Missouri, according to the recorded plat thereof, being *being* a tract or parcel of land fronting 49 feet 6 inches on the east line of Main Street by a depth eastwardly between parallel lines and along the north line of East Seventeenth Street 113 feet 6 inches to alley.

All Lot Ten (10) in Block six (6), McDaniels' Addition, an addition in Kansas City, Jackson County, Missouri;

were and are under the Acts of the General Assembly of the State of Missouri incorporating plaintiff and constituting its charter, exempt from taxation.

[fol. 160] That by reason of said charter exemptions the assessment and levy of taxes upon the said property and the issuance of tax bills against the same were and are contrary to law and void.

That tax bills made out and issued for tax is against said property and any parcels thereof for 1933 and subsequent years were and are unauthorized by law and void, and that the said tax bills, and each of them and any reissue or renewals thereof ought to be and are hereby ordered cancelled.

That the temporary injunction heretofore issued by this Court on November 20, 1934, be made permanent, and that defendant Frank McCabe as Assessor of Kansas City, Missouri, and his deputies, agents and servants be forever enjoined and restrained from assessing any general city taxes against any of plaintiffs' said property and that the defendant H. J. Gorman as City Treasurer of Kansas City, Missouri, his deputies, agents and servants be and they are hereby forever enjoined and restrained from in any manner collecting or enforcing or attempting to collect or enforce the payment of any of said tax bills or any renewals or reissues thereof and from seizing, offering for sale or selling plaintiff's said property or any part thereof for the enforcing or collection of any of said tax bills or any renewals or reissues thereof.

And that plaintiff have and recover of the defendant its costs herein.

Entry furnished.

[fol. 161] And afterwards, and on the 27th day of February, 1940, the same being the 43rd day of the regular January, 1940, Term of said Court, at the same term, and within four days after the rendition of the judgment herein, the defendants filed herein a Motion for New Trial, in words and figures following, to-wit:

MOTION FOR NEW TRIAL

Come now H. J. Gorman, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, defendants in this cause and move the Court to set aside the finding and judgment in the issuance of the peremptory writ and to grant to defendants a new trial in the above entitled cause, and assign as reasons therefor the following errors each and all of which are material to the issues and to the rights of defendants and which entitle defendants to a new trial and rehearing:

1. Because the findings, judgment and peremptory writ are against the evidence;

2. Because the findings, judgment and peremptory writ are against the weight of the evidence;

3. Because the findings, judgment and peremptory writ are against the law;

4. Because the judgment of the Court is against the law;

5. Because upon the law and the evidence the judgment of the Court should have been for the defendants;

[fol. 162] 6. The Court erred in failing to find and rule that plaintiff had an adequate remedy at law;

7. The Court erred in failing to find and rule that it had no jurisdiction in this matter;

8. The Court erred in failing to find and rule that plaintiff has been guilty of laches and is not entitled to relief in this Court;

9. The Court erred in failing to find that plaintiff has exceeded its corporate powers and has forfeited the immunities claimed herein;

10. The Court erred in finding and decreeing that plaintiff is not liable for taxes upon any property involved herein;

11. The Court erred in failing to find from all the evidence that plaintiff was not and is not entitled to any relief in this Court and in failing to enter its judgment and decree in favor of defendants;

12. The Court erred in not holding that plaintiff's bill fails to allege facts sufficient to constitute a cause of action;

13. The Court erred in holding and deciding for plaintiff and against defendants in that such holding and decision violates the Constitution of the State of Missouri as effective November 30, 1875, and at present, by being contrary to and in violation of Sections 6 and 7 of Article X of said constitution;

14. The Court's finding and decree violated and were contrary to Sections 6 and 7 of Article X of the Constitution of Missouri;

[fol. 163] 15. The Court erred in finding and decreeing that the alleged agreement or exemption was valid and binding and within the intendment and protection of Section 10, Article I of the Constitution of the United States providing against impairment of contracts;

16. The Court erred in holding and decreeing that Sections 9742 and 9743 of the Revised Statutes of Missouri of 1929 do not bar any alleged immunity claimed by plaintiff

and in finding and deciding that said sections are null and void as being contrary to and in violation of Section 10, Article I of the Constitution of the United States in that the same impairs the obligation of contracts;

17. The Court erred in deciding and decreeing that the legislature of the State of Missouri acted so as to contract or bargain away forever the taxing power with regard to the plaintiff, and in holding that to decide otherwise would violate Section 10, Article I of the Constitution of the United States which provides among other things that no state shall pass any law impairing in any way the obligations of contracts;

18. The Court erred in holding and deciding that the transaction here involved was within the intended protection and scope of Section 10, Article I of the Constitution of the United States;

19. The Court erred in finding and decreeing that this transaction was in the nature of a contract and in holding the same to be binding upon defendants in that such finding and decreeing is contrary to the equal protection clause of [fol. 164] the Constitution of the United States and contrary to the Fourteenth Amendment of the Constitution of the United States;

20. The Court erred in deciding and decreeing that this transaction was not contrary to Article IV, Section 25 of the Constitution of the State of Missouri which provides that the legislature shall not pass special laws exempting persons or property from taxation;

21. The Court erred in deciding and decreeing that this transaction between plaintiff and the legislative representatives of the state was binding so as to prevent Kansas City from levying municipal taxes upon property owned by the plaintiff within the limits of Kansas City in that the same is a violation of the Fourteenth Amendment of the Constitution of the United States in that it validates a transaction which would abridge the privileges and immunities of the citizens of the United States and would cause property of the inhabitants of the State of Missouri to be taken without due process of law and deny the equal protection of the laws to all persons, all of which rights are guaranteed by

the Constitution of the United States and the Constitution of the State of Missouri;

22. The Court erred in finding and decreeing for plaintiff in that the same is a finding and holding to the effect that Sections 2 and 19 of Article XIII of the Missouri Constitution of 1820 and Section 25 of Article IV of the Constitution of Missouri of 1865 and Sections 6 and 7 of Article X of the Constitution of Missouri of 1875 and Section 16 of [fol. 165] Article IX of the Constitutional Amendment of Missouri of 1920 were invalid and contrary to Section 1 of the Fourteenth Amendment of the Constitution of the United States and for the reason that said constitutional provisions and statutes were contrary to Section 10, Article I of the Constitution of the United States concerning the impairment of contractual rights;

23. The Court erred in holding and decreeing for plaintiff and against defendants in that the same violates Section 25 of Article IV of the Constitution of Missouri providing that all property subject to taxation in this state shall be taxed in proportion to its value.

Wm. Paul Pinkerton, City Counselor; Wm. Paul Pinkerton, Elmo Hunter, Assistant City Counselor, Attorneys for Defendants.

Service of motion for new trial is hereby acknowledged this 27 day of February, 1940.

R. B. Caldwell, Attorney for Plaintiff.

Endorsed on the back thereof is the number and style of the cause, the character of the document, and the following: No. 436,537 1-26-40 Div. 8 The Washington University, a Corporation, Plaintiff, vs. H. J. Gorman, City Treasurer of Kansas City, Missouri, et al., Defendants.

[fol. 166] Motion for New Trial

Wm. Paul Pinkerton, City Counselor, Elmo Hunter, Assistant City Counselor, Attorneys for Defendant.

Filed Feb. 27, 1940, Bernard T. Flannery, Clerk, by L. B. Frame.

Order Overruling Motion for New Trial

And afterwards, and on the 27th day of April, 1940, the same being the 41st day of the regular March, 1940, Term

of said Court, the said defendants' Motion for a New Trial was taken up and submitted to the Court, and having been by the Court seen and heard, and duly considered, was by the Court overruled; and to which action and ruling of the Court in overruling said motion, and in refusing to grant the defendants a new trial herein, the defendants then and there duly excepted and still except.

And afterwards, and on the 4th day of May, 1940, the same being the 47th day of the regular March, 1940, Term of said Court, the defendants filed herein their Application and Affidavit for Appeal, in words and figures following, to-wit:

APPLICATION AND AFFIDAVIT FOR APPEAL

Come now H. J. Gorman, City Treasurer of Kansas City, Missouri and Frank McCabe, City Assessor of Kansas City, [fol. 167] Missouri, and pray the Court for an appeal of the above entitled cause to the Supreme Court of Missouri.

Wm. Paul Pinkerton, City Counselor, Elmo Hunter, Assistant City Counselor, Attorneys for Defendants, H. J. Gorman and Frank McCabe.

STATE OF MISSOURI,
County of Jackson, ss:

Elmo Hunter, being duly sworn on oath, says that he is attorney and agent for the above named defendants and appellants in the above entitled case in which said cause said defendants, H. J. Gorman, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, now pray for an appeal in the above entitled cause to the Supreme Court of Missouri, and as such attorney and agent, has authority to and makes this affidavit for and on behalf of said defendants and appellants; and affiant further states that such appeal is not made for vexation or delay, but because affiant believes said appellants are aggrieved by the judgment and decision of this Court in the above entitled cause.

Elmo Hunter.

Subscribed and sworn to before me this 3rd day of May, 1940. Mary Phillips, Notary Public, Jack-
[fol. 168] son County, Mo. (L. S.) My Commission Expires February 28, 1943.

Endorsed on the back thereof is the following:

No. 436,537, The Washington University, a corporation, Plaintiff, vs. H. J. Gorman, et al., Defendants. Application and Affidavit for Appeal—Filed May 4, 1940, Bernard T. Flannery, Clerk, by ——, Deputy. Wm. Paul Pinkerton, City Counselor, Elmo Hunter, Assistant City Counselor, Attorneys for Defendants, H. J. Gorman and Frank McCabe.

ORDER ALLOWING APPEAL

And afterwards, and on the 4th day of May, 1940, the same being the 47th day of the regular March, 1940 term of said Court, the defendants' Application and Affidavit for Appeal was by the Court sustained, and appeal granted and allowed, as prayed, to the Supreme Court of the State of Missouri and the defendants thereupon granted leave to file their bill of exceptions in this cause within the time prescribed by law therefor.

Wherefore, defendants pray the Court to settle and allow this, their bill of exceptions to all and singular the acts, rulings and orders of the Court in the premises, and that the same may be signed, filed and made a part of the record herein.

ORDER SETTLING BILL OF EXCEPTIONS

Now, Therefore, the Court, being fully advised in the premises, doth find the foregoing to be a correct bill of exceptions taken and saved on behalf of the defendants herein, and doth now sign the same, and doth order that the same may be filed and made a part of the record in this cause, which is accordingly done.

[fols. 169-171] Given under the hand of the Judge of said Court before whom said proceedings were had on this 16 day of Sept., 1940.

Paul A. Buzard, Judge of the Circuit Court of Jackson County, Missouri, at Kansas City, Division No. 8.

AGREEMENT TO BILL OF EXCEPTIONS

We hereby consent that the foregoing is a full, true and correct bill of exceptions on behalf of the defendants herein, and agree that the same may be signed, filed and made a part of the record in this cause.

McCune, Caldwell & Downing, Attorneys for Plaintiff. Elmo Hunter, Roy B. Cunningham, Attorneys for Defendants.

[fol. 172] And thereafter, and on the 23rd day of January 1941, the following proceedings were had and entered of record in said cause, to-wit:

No. 37435

WASHINGTON UNIVERSITY, a Corp., Resp.,
vs.
H. F. GORMAN, etc., et al., Apps.

Come now the parties, by their respective attorneys, and after arguments herein submit this cause to the court.

And thereafter, and on the 12th day of June 1941, the following further proceedings were had and entered of record in said cause, to-wit:

THE WASHINGTON UNIVERSITY, a Corporation, Respondent,
vs.
H. F. GORMAN, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Appellants

APPEAL FROM THE CIRCUIT COURT OF JACKSON COUNTY

Now at this day come again the parties, by their respective attorneys, and the court here being now sufficiently advised of and concerning the premises, doth consider and adjudge that the judgment aforesaid, in form aforesaid, by the said Circuit Court of Jackson County rendered, be in all things affirmed and stand in full force and effect; and that the said respondent recover against the said appellants its costs and charges herein expended and have therefor execution. (Opinion filed.)

Which said opinion is in words and figures following, to-wit:

[fol. 173] IN THE SUPREME COURT OF MISSOURI, DIVISION NUMBER ONE, SEPTEMBER TERM, 1940, JANUARY CALL, 1941

No. 37,435

THE WASHINGTON UNIVERSITY, Reespondent,
v.
H. J. GORMAN, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Appellants

This suit was brought to enjoin the treasurer and the assessor of Kansas City from levying and collecting cer-

tain real estate taxes on property in that city owned by Washington University of St. Louis under a charter exempting all its property from taxes.

The University's petition alleges that it was incorporated by an Act of the General Assembly on February 22, 1853 as the Eliot Seminary. That Act provided that the incorporators "are hereby constituted a body corporate and politic by the name of 'The Eliot Seminary' and by that name shall have perpetual succession and be capable of taking and holding by gift, grant, devise or otherwise, and conveying, leasing or otherwise disposing of any real estate real, personal or mixed, annuities, endowments, franchises and other hereditaments which may conduce to the support of said Seminary, or to the promotion of its objects; all property of said corporation shall be exempt from taxation and the sixth, seventh and eighth sections of the first Article of the Act concerning corporations, approved March 19, 1845, shall not apply to this corporation." The seventh section of the Act concerning corporations referred to in the above provision of the charter, and declared not applicable, was as follows: "The charter of every corporation that shall hereafter be granted by the legislature shall be [fol. 174] subject to alteration, suspension and repeal in the discretion of the legislature." Chapter 34, Article I, Section 7 R. S. 1845. The incorporators named in the act accepted the charter and proceeded to organize Eliot Seminary as a seminary and institution of learning, and the corporation acquired and held property as such and proceeded to carry out the purposes of the charter. On February 12, 1857 the charter was amended by the General Assembly and the name Eliot Seminary was changed to Washington University, by which name the University has since been known. After its founding, the University acquired money and property given to it by various persons in aid of its purposes and has devoted the profit, income and revenue from such property for the carrying on of its educational purposes.

On July 4, 1865 the people of Missouri adopted a new Constitution which provided in Article IV, Section 27 that the General Assembly should not pass special laws exempting any property of any named person or corporation from taxation. Pursuant to this provision the legislature provided for the taxation of all property belonging to elee-

mosynary corporations except that expressly exempt from taxation by the constitutional provisions.

In 1866 Rowse, the collector of revenue of St. Louis County, assessed taxes against the property of the University in St. Louis County. The University enjoined the collection of these taxes, but its action was dismissed by this court (Washington University v. Rowse, 42 Mo. 308). The University appealed from this decision to the United States Supreme Court on the ground that its charter constituted a contract with the State and was protected under Article 1, Section 10 of the Constitution of the United States against any impairment by the State. That court upheld this contention in the Washington University v. Rouse, 75 U. S. 439. This court, in compliance with the mandate from above, set aside its dismissal of the University petition and affirmed the judgment of the trial court granting an injunction in favor of the University.

On October 30, 1875 the people of Missouri adopted a new [fol. 175] Constitution which provided, among other things, that "all laws exempting property from taxation, other than the property above enumerated, shall be void." (Art. X, Sec. 7.) In pursuance to the Constitution the General Assembly adopted statutes providing that all property shall be subject to taxation except such as it has exempted. (Secs. 10936-8, R. S. 1939.) The University contends that the constitutional and statutory provisions as applied to it are null and void, as being contrary to and in violation of Section 10, Article I of the Constitution of the United States and that all its property is exempt from tax.

The University further alleges that in 1931 the assessor of the City of St. Louis levied taxes against its property and was attempting to enforce the collection of the same when it brought suit to enjoin the collector from doing so. It obtained a permanent injunction and the collector appealed to this court. We held that all property of the University, whether or not occupied and directly used for educational purposes, was exempt from taxation and that the University's charter was a valid contract with the State of Missouri that could not be impaired by subsequent legislation. Washington University v. Baumann, 341 Mo. 708, 108 S. W. (2d) 403.

The University charges that notwithstanding the exemption from taxation of its property the defendants have as-

sessed and are attempting to collect taxes on such property and are about to sell the same for non-payment of taxes.

Its prayer asks that the property be declared exempt from taxation and the tax bills be held void and that the defendants be restrained from assessing taxes or attempting to collect or enforce the payment of taxes.

The answer challenges the power of the assembly to grant the original charter and the power to exempt, perpetually, the University's property from taxation. After trial, the court below entered a decree holding that the University's property was not subject to taxation because of the charter exemption and made permanent the temporary injunction previously issued. From this judgment the defendants have appealed.

[fol. 176] Appellants' principal contention is that the question whether the University's charter constitutes a contract with the state is again open for determination because of the ruling of Erie Railroad Company v. Tompkins, 304 U. S. 64. They argue that the decision of the United States Supreme Court in the Rowse case, which held that such charter did constitute a contract, and for that reason was entitled to the protection of the Federal Constitution, was founded upon the doctrine announced in Swift v. Tyson, 16 Peters 1, which permitted Federal Courts to exercise their independent judgment as to what the common law of the State should be, which doctrine is now repudiated by the Erie case. The effect of their argument is that the United States Supreme Court in the Rowse case was bound to follow the decision of this court. This argument is irrelevant.

In the first place the doctrine erroneously announced in Swift v. Tyson was completely extraneous to cases arising under the circumstances of the Rowse case. That doctrine had to do with the application of Section 34 of the Federal Judiciary Act of 1789, 28 U. S. C., Section 725 which provides: "The laws of the several states, except where the constitution, treaties, or statutes of the United States otherwise require or provide, shall be regarded as rules of decision in trials at common law in the Courts of the United States, in cases where they apply." Swift v. Tyson held that Federal Courts exercising jurisdiction on the ground of diversity of citizenship need not, in matters of general jurisprudence, apply the unwritten law of the State as declared by its highest court but that they were free to exercise an independent judgment as to the common law of the

State. It is evident that this decision in no way applied to cases to be determined according to the Constitution of the United States. In such cases the act was not applicable. The decision in the Erie case conforms to the act for it states: "*Except in matters governed by the Federal Constitution or by Acts of Congress,* the law to be applied in any case is the law of the State. And whether the law of the State shall be declared by its legislature in a statute [fol. 177] or by its highest court in a decision is not a matter of federal concern. There is no federal, general common law." (Our italics.)

A review of the two decisions in the University's case against Rowse also dispels this contention. Our opinion in that case recognized that the question to be decided was whether the charter granted by the assembly to the University amounted to a contract because we said: "if it be a contract, it must stand, and the State is bound by it, however inexpedient or injudicious it may have been when made. By the Federal Constitution no State can pass any law impairing the obligation of the contracts." The opinion then proceeds on the theory that there was no contract because there was no consideration for one. There being no contract we held the assembly had no power to grant the University an irrevocable or irrepealable exemption from taxation. On appeal to the United States Supreme Court that court found that there was a consideration for the granting of the charter and therefore there was a valid contract which could not be impaired under the Federal Constitution by any species of state legislation.

We should observe there was a companion case similar in all respects and considered at the same time brought by The Home of the Friendless against Rowse for the same relief. See 42 Mo. 361. In this court the opinion ruling both cases was written in the University case while in the United States Supreme Court the principal opinion was handed down in The Home of the Friendless case.

We certified both cases to the United States Supreme Court on the ground, as stated by that court (75 U. S. l.c. 432, "there was necessarily drawn in question the construction of that clause of the Constitution of the United States, which prohibits a state from passing a law impairing the obligation of a contract, and that the decision was against the right claimed by the complainant, and was necessary to the adjudication of the cause; thus bringing

[fol. 178] the case clearly within the Twenty-fifth Section of the Judicial Act, which gives to this court in such cases a power to examine and affirm or reverse the decision of the State Court."

Under Article III of the Federal Constitution jurisdiction of cases arising under the constitution is vested in the supreme court on appeal under such regulations as Congress shall make. The appeal in these two cases, as pointed out, came under the provisions of Section 25 of the Judiciary Act (1789), 28 U. S. C., Sec. 344.

In this situation it would be absurd to say that the United States Supreme Court is bound by the decision of this court when that very decision is under review on appeal. While it is true the United States Supreme Court in such cases will generally defer in cases of doubt to the decision of a state court in the latter's interpretation of the statutes of its own state, nevertheless its unbroken line of decision establishes the rule that it will form its own judgment as to the existence and construction of the alleged contract. "Of what use would the appellate power of this court be to the litigant who feels himself aggrieved by some particular state legislation, if this court could not decide independently of all adjudication by the Supreme Court of the State whether or not the instrument in controversy was expressive of a contract and within the protection of the Constitution of the United States and that its obligation should be enforced, notwithstanding a contrary conclusion by the Supreme Court of the State. It never was intended and cannot be sustained by any course of reasoning that this court should or could with fidelity to the Constitution of the United States follow the Supreme Court of a state in such matters when it entertains a different opinion." Jefferson Branch Bank v. Skelly, 66 U. S. 436 at 443.

This rule has been reaffirmed in two decisions handed down since the Erie case, viz. Higginbotham v. Baton [fol. 179] Rouge, 306 U. S. 535 and American Toll Bridge Co. v. Railroad Comm. of California, 307 U. S. 486. For other applications of the rule see the cases cited in these two decisions.

There can be no question but that the decision of the United States Supreme Court in the University's case against Rowse is today the law and is commandingly decisive of this case. We must abide by it now as we did in Washington v. Baumann. We reaffirm our decision in that

case where we said: "* * * the University has a contractual charter with the State and that contract under the decision of the United States Supreme Court in the Washington University Case cannot be impaired by subsequent legislation. It stands superior not only to our present taxing law, but even to our Constitution insofar as they purport to destroy the University privileges and immunities thereunder, relied on for years by it and at least some of its benefactors, as the evidence shows. To do so would be to commit a fraud."

Being of this mind it is not necessary to discuss other points raised by appellants about the wisdom of granting such a charter. In many instances the power to do so was abused so that it has since been abolished or cautiously guarded. But under the protection of the Federal Constitution even grants which turned out to be improvident are beyond the reach of the State. In this instance however it cannot be said that the grant was improvident. When it was made the constitution provided that "schools and means of education shall forever be encouraged." Const. 1820, Art. VI, Sec. 1. The Legislature properly deemed the purposes for which the University was organized to be beneficial to the people. Here were a group of public-spirited and unselfish men generously seeking to establish an educational institution at private expense which to some extent would relieve the State in that field. Laws for the creation of a university supported by the State had been adopted only fourteen years before. It was the burdensome obligations on the State arising "from a false and ruinous [fol. 180] system of loaning its credit to corporations by which it incurred an immense debt" and from the conditions following the civil war all calling for exceedingly onerous taxation which brought about the all-inclusive change of policy through the restrictions in the 1865 Constitution. 42 Mo. l. c. 326. At the same time the principle that education was essential to the preservation of our rights and liberties was reasserted (Const. 1865, Art. IX) and it was again later in the Constitution of 1875 (Art. XI). Verily the same is true today.

The University pleaded and proved two grounds for relief. First, its charter exemption and second, the doctrine of res judicata. The decree of the trial court in favor of the University was based exclusively on the ground that the charter of the University exempted it from taxation.

There is no mention, naturally, of res judicata in appellants' motion for new trial nor did the University appeal from the decree because of the court's failure to rule on this contention. While we find the University's plea of res judicata is upheld by the decisions in Kansas City Exposition Driving Park v. Kansas City, 174 Mo. 425, 74 S. W. 979 and North St. Louis Gymnastic Society v. James Hagerman, Jr., 232 Mo. 693, 135 S. W. 42, we can not pass upon it because it is not before us.

The judgment is affirmed.

James M. Douglas, Judge.

All concur.

And thereafter, and on the 21st day of June 1941, the following further proceedings were had and entered of record in said cause, to-wit: No. 37435, The Washington University, resp., vs. H. J. Gorman, etc. et al., apps.

Come now the appellants, by attorney, and file herein a motion for a rehearing.

Which said motion is in words and figures following:

[fol. 181] In the Supreme Court of Missouri, September Term, 1940, Division No. 1

No. 37,435

The Washington University, Respondent,

vs.

H. J. Gorman, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Appellants

Appellants' Notice of Filing of Motion for Rehearing

Kansas City, Missouri, actual appellant in the above designated case, hereby notifies The Washington University, respondent herein, that on June 21, 1941 it will file with Division Number One of the Supreme Court of Missouri a Motion for Rehearing in the above designated case, a copy of said motion being included with this notice.

W. E. Kemp, City Counselor; Roy B. Cunningham, Elmo B. Hunter, Jerry T. Duggan, Assistant City Counselors, Attorneys for Appellants.

Service of said copy of motion and rehearing and of this notice is hereby acknowledged this 19th day of June, 1941.
McCune, Caldwell, Downing & Noble, Attorneys for Respondent.

[fol. 182] IN THE SUPREME COURT OF MISSOURI, SEPTEMBER TERM, 1940, DIVISION NO. 1

No. 37,435

THE WASHINGTON UNIVERSITY, Respondent,

vs.

H. J. GORMAN, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Appellants

APPELLANTS' MOTION FOR REHEARING

Now at this date come the appellants, and respectfully move the Court to set aside its opinion heretofore rendered in this cause and to grant appellants a rehearing thereof for the following reasons, to-wit:

1. This Court has erroneously ruled that the decision of the United States Supreme Court, in the case of Washington University v. Rouse, 75 U. S. 439, is absolutely binding upon this Court so that this Court may not exercise any judgment of its own in this matter. This erroneous ruling must have occurred by virtue of this Court having overlooked appellants' contention that by reasoning analogous to that applied in the case of Phillips Exeter Academy v. Exeter, 11 Atl. (2d) 569 (S. Ct. of New Hampshire), the doctrine established by the case of Swift v. Tyson, 16 Pet. 1, being specifically overruled by the United States Supreme Court in the case of Erie Railroad Co. v. Tompkins, 304 U. S. 64, leaves this Court free to determine the question of whether or not the alleged exemption from taxation of Washington University did in fact amount to an irrevocable contract. This Court has neither cited, discussed nor referred to the case of Phillips Exeter Academy v. Exeter, supra, which case appellants have relied upon as establishing the effect of the decision of Erie Railroad Co. v. Tomp-

kins, supra, to this kind of situation in the absence of any decision of the United States Supreme Court thereon.

[fol. 183] 2. This Court has erroneously ruled that the contention of appellants was that "the United States Supreme Court is bound by the decision of this Court" in the matter under review, when in fact the real question presented by appellants and the position appellants took is that while the United States Supreme Court "does have the power of independent determination as to the existence of a contract, it is nevertheless our contention that since the Erie decision that determination must be made in the light of the law of the state involved. * * *"

3. The Court overlooked the contention of the appellants not only that none of respondent's property was exempt from taxation by virtue of the charter involved, but also that all property acquired subsequent to the enactment of the Constitution of the State of Missouri of 1865 and specifically Article X thereof, which provides that all other than certain named exemptions from taxation shall be void, was not exempt from taxation, it appearing that all property involved in this suit was acquired subsequent to the enactment of the Constitution of Missouri of 1865.

4. The Court erred in stating in its opinion that the respondent Washington University had "pleaded and proved two grounds for relief. First, its charter exemption and second, the doctrine of res judicata." This Court evidently overlooked the acknowledged fact that neither Kansas City, Missouri, nor any of its privies has ever been before any other Court whatsoever to litigate the question presented in this case. In all of the cases mentioned by this Court as having specifically concerned this question, the City of St. Louis was the other party to the suit and different property was being taxed. The rule is clear in this state and elsewhere, that the doctrine of res judicata does not apply unless there has been previous litigation on the same cause and between the same parties or their privies. Baumhoff v. St. Louis & K. R. Co., 205 Mo. 248, 104 S. W. 5, l. c. 10; Mo. Kans. & Texas Railway v. American Surety Co., 291 Mo. 92, 267 S. W. 657, 662; Kirk v. Metropolitan Life [fol. 184] Insurance Co., 225 Mo. App. 756, 38 S. W. (2d) 519, l. c. 521 and cases cited therein. This Court has, through error, confused the doctrine of stare decisis, which

doctrine is that by virtue of previous decisions certain legal principles are established and it is not necessary thereunder that the same parties be before the Court, with the doctrine of res judicata, which doctrine requires that the same parties or their privies be before the Court. By erroneously applying the doctrine of res judicata to appellants who have never, by privy or otherwise, been a party to any previous suit concerning this question, this Court has failed to give full consideration to the principles of law presented by appellants.

5. This Court by erroneously ruling that it had no right to inquire further into the matter because of the effect upon it of the decision of Washington University v. Rouse, 75 U. S. 439, has either overlooked or failed to pass upon points II, III, IV, V and VI of appellants' statement and brief submitted herein.

W. E. Kemp, City Counselor; Roy B. Cunningham, Elmo B. Hunter, Jerry T. Duggan, Assistant City Counselors, Attorneys for Appellants.

Received copy of the foregoing motion and notice that on June 21, 1941 same will be filed with the Clerk of the Supreme Court.

(Signed) McCune, Caldwell, Downing & Noble, Attorneys for Respondent.

June 19, 1941.

[Endorsed:] No. 37,435. In the Supreme Court of Missouri, September Term, 1940, Division No. 1. The Washington University, Respondent, vs. H. J. Gorman, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Appellants. Appellants' Motion for Rehearing. W. E. Kemp, City Counselor, Roy B. Cunningham, Elmo B. Hunter, Jerry T. Duggan, Assistant City Counselors, Attorneys for Appellants.

[fol. 185] And thereafter, and on the 25th day of July, 1941, the following further proceedings were had and entered of record in said cause, to-wit:

No. 37435

THE WASHINGTON UNIVERSITY, Resp.,

vs.

H. J. GORMAN, etc., et al., Apps.

Now at this day, the court having seen and fully considered appellants' motion for a rehearing, doth order that said motion be, and the same is hereby overruled.

STATE OF MISSOURI, sct:

I, E. F. Elliott, Clerk of the Supreme Court of the State of Missouri, do hereby certify that the foregoing pages contain a full, true and complete transcript of the record and proceedings in a cause entitled The Washington University, respondent, against H. J. Gorman, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, appellants, No. 37,435, as the same are on file and of record in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Supreme Court of the State of Missouri, at my office in the City of Jefferson City this 22nd day of August 1941.

E. F. Elliott, Clerk, Supreme Court. (Seal of the Supreme Court of Missouri.)

[fol. 186] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 24, 1941

The petition herein for a writ of certiorari to the Supreme Court of the State of Missouri is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: File No. 46,039, Missouri, Supreme Court, Term No. 711. H. J. Gorman, City Treasurer of Kansas City, Missouri, and Frank McCabe, City Assessor of Kansas City, Missouri, Petitioners, vs. The Washington University. Petition for a writ of certiorari and exhibit thereto. Filed October 22, 1941. Term No. 711 O. T. 1941.